



When Friends Become Foes: Collaboration as a Catalyst for Conflict

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Abstract

Social embeddedness research has suggested that a history of collaboration between rivals should facilitate cooperation and prevent conflict. In contrast, the present study explores how a history of collaboration between people who subsequently become rivals can exacerbate conflict rather than facilitate future collaboration when salient others may expect them to be antagonistic. We develop this argument for a general set of relationships in which agents who previously collaborated become rivals while representing contesting principals. These agents may be perceived by the principals they represent as having compromised loyalties. This is especially likely when the principals whom the agents represent compete intensely or have previously been in conflict. To mitigate principals' loyalty concerns, agents engage in compensatory behaviors meant to demonstrate social and psychological distance from former collaborators and now-rivals. Paradoxically, these behaviors transform a history of collaboration into a catalyst for conflict. Our empirical analyses are based on the professional histories of more than 20,000 external legal counsel representing corporate clients in intellectual property lawsuits filed from 2000 to 2015. Results reveal that lawyers engage in uncooperative behaviors in court to distance themselves from opposing lawyers who are former collaborators. These dynamics are associated with longer, more contentious litigation and lost economic value for clients, as evidenced by an analysis of companies' abnormal stock market returns upon the termination of a lawsuit. Our research thus sheds lights on a mechanism by which past collaboration can undermine future collaboration and carries potential implications for research on social structures and for work on the interplay of structure and evaluative dynamics.

Keywords: social capital, interorganizational relations, conflict and cooperation

A central precept of the embeddedness perspective is that a history of collaboration between individuals or firms facilitates their subsequent collaboration (Granovetter, 1985). This tenet has been applied to explain future collaboration

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between both allies and rivals in a range of contexts. The propensity of past collaborators to collaborate further has been documented in advice-seeking and joint activities among individuals (McDonald and Westphal, 2003), investment banks (Podolny, 1994), advertising firms (Rogan, 2014), and lobbying firms and their clients (Bermiss and Greenbaum, 2016), as well as in relationships between small businesses and commercial lenders (Uzzi, 1999). Similarly, prior collaborative relationships between rivals enable them to work cooperatively to attenuate the likelihood and severity of future conflict. In particular, a history of working together in the same intergovernmental organizations makes nations less likely to go to war against one another (Boehmer, Gartzke, and Nordstrom, 2004; Ingram and Torfason, 2010). Past collaborative relationships among competitors can also facilitate coordinated decisions on prices (Baker and Faulkner, 1993; Gimeno, 2004) and reduce the likelihood of future legal conflict (Sytch and Tatarynowicz, 2014).

But under certain conditions, a history of collaboration between rivals may systematically hinder their ability to collaborate effectively and instead result in more contentious interactions. Collaborating with rivals is a legitimate form of interaction for individuals and organizations to the extent that it is sanctioned by salient stakeholders—evaluative audiences that could impose social or economic consequences on actors and may include shareholders, consumers, or clients (Mitchell, Agle, and Wood, 1997). The presence of salient stakeholders who expect and desire an antagonistic relationship with the other side can transform collaboration into a catalyst for conflict. A concrete application of these dynamics is found in relationships in which third-party agents represent contesting corporate principals, such as when companies on opposite sides of a transaction are represented by lawyers, bankers, or consultants. In these situations, agents often find themselves facing off against other agents who are previous collaborators. For example, two bankers could represent competing bidders in a merger soon after jointly syndicating a deal for another client. Similarly, two litigators could represent clients who are counterparties in court after having represented different clients who joined forces as co-filers in another lawsuit. As such, these agents transition from being past collaborators to being rivals.

How does a history of collaboration between now-rival agents shape future interactions between them, when they represent principals who may expect and desire an antagonistic relationship with the other side? The agents' history of collaboration with rivals may lead the principals to question their agents' loyalty, which is of paramount importance for aligning agents' goals and behaviors with those of their principals. Achieving alignment helps resolve the information asymmetries, misaligned incentives, and potential conflicts of interest that typically plague principal-agent interactions (Fama and Jensen, 1983; Eisenhardt, 1989; Ross, Anderson, and Weitz, 1997; Sharma, 1997).

Concerns about agents' loyalty likely will be particularly pronounced when contesting principals compete intensely or have been in conflict. In such cases, principals are especially likely to view agents who have collaborated with a rival as potentially compromised and hence doubt their loyalty (Simmel, 1950: 150–151; 2009: 29). Drawing on research on psychological compensation and impression management (Bäckman and Dixon, 1992; Porac, Wade, and Pollock, 1999; Westphal and Graebner, 2010), we theorize that agents who are vulnerable to loyalty concerns may behave aggressively or uncooperatively

toward former collaborators to distance themselves from the compromising affiliations.

These agents may engage in compensatory behaviors that are effortful, targeted responses to real or perceived threats to the agents' image and reputation (Gollwitzer, Wicklund, and Hilton, 1982; Ellemers, Spears, and Doosje, 2002). For agents who may feel compromised by their past collaborative history with rivals, such compensatory behaviors aim to mitigate doubts about divided allegiances, establish unwavering loyalty to their principals, and create social and psychological distance from the compromising affiliation with the past collaborator, now a rival agent. Compensatory behaviors may therefore include aggressive, undermining, or uncooperative behaviors directed at former collaborators, which can derail cooperative interactions and lead to conflict. Thus, rather than lubricating future social and economic interactions, a history of collaboration between rivals may paradoxically catalyze future conflict.

We test our predictions in the context of interorganizational legal disputes concerning intellectual property (IP), in which corporate plaintiffs and defendants (principals) are represented by external lawyers (agents). Our empirical analyses are based on the professional histories of 21,757 lawyers representing 11,206 corporate clients in 4,913 IP lawsuits filed between 2000 and 2015. It is not uncommon for IP lawyers from different law firms to collaborate when representing the same side (i.e., co-plaintiffs or co-defendants) in one lawsuit and subsequently oppose one another in a different lawsuit when representing different clients. When applied in this context, the traditional embeddedness view suggests that the trust, mutual knowledge, and coordination engendered by previous collaboration among rival lawyers should lead to shorter, more collaborative legal proceedings, which create value for clients by avoiding trial and reaching a voluntary settlement agreement. A collaborative history between lawyers would be particularly valuable for resolving conflicts between intense market competitors or between those who have engaged in previous confrontations.

In contrast, we suggest that rival lawyers who have collaborated previously are likely to experience intense pressure to demonstrate their loyalty when representing market competitors or clients who have engaged in previous conflict. In these situations, lawyers will engage in uncooperative compensatory behaviors to rectify loyalty concerns and distance themselves from former collaborators, which will escalate conflict, prolong litigation, and increase the likelihood that a case will go to trial.

THE ROLE OF PAST COLLABORATION IN FUTURE INTERACTIONS

One of the most established findings from embeddedness research is that a history of collaborative interaction facilitates future collaboration between actors. It can facilitate joint problem-solving activities among exchange parties (Zaheer, McEvily, and Perrone, 1998; McEvily and Marcus, 2005), improve the overall quality of joint solutions (Jones, Hesterly, and Borgatti, 1997; Tsai and Ghoshal, 1998), build trust (Gulati, 1995; Gulati and Sytch, 2008), and provide exchange partners with tools to address unanticipated future problems (Mariotti and Delbridge, 2012). Parties that previously collaborated understand one another better because the information exchanged is typically imbued with partner-specific value, context, and meaning, and they can adjust their routines

and improve future rounds of collaboration (Koka and Prescott, 2002; Mayer and Argyres, 2004). In short, numerous studies have indicated that collaboration often begets future and, in many cases, better collaboration. Even the work that has questioned whether the economic outcomes of repeated collaboration are universally positive—by pointing to the constraints of irrational attachment and excessive cohesion (e.g., Sorenson and Waguespack, 2006; Holloway and Parmigiani, 2016)—is predicated on past collaboration engendering future collaboration.

The embeddedness logic of past collaboration engendering future collaboration has also been applied to interactions among rivals. Extant work has shown that collaborative relationships can enable rivals to work together to lessen the likelihood and severity of future conflict. Collaborative relationships among competitors can facilitate coordinated decisions on prices (Baker and Faulkner, 1993; Gimeno, 2004) and reduce the likelihood of future legal conflict (Sytych and Tatarynowicz, 2014). Furthermore, common ownership by the same large institutional investors reduces competition in ticket prices among U.S. airlines (Azar, Schmalz, and Tecu, 2018), while intermarried lineages and common memberships in intergovernmental organizations make nations less likely to go to war against one another (Pratt, 2001; Boehmer, Gartzke, and Nordstrom, 2004; Ingram and Torfason, 2010). Underlying this body of work is the insight that collaborative experiences between rivals can facilitate coordination, reciprocal learning, and the discovery of mutually acceptable solutions, all of which help rivals avoid conflict escalation in the form of price wars, prolonged legal battles, or warfare.¹

Loyalty Concerns

Our understanding of the role a history of collaboration plays in interactions between rivals may need to be revised substantively when those rivals are subject to the loyalty demands and concerns of salient stakeholders. Stakeholders may question the loyalty of those who have collaborated with rivals because their true allegiance “cannot be definitely ascertained and is, in fact, doubted often enough” (Simmel, 1950: 150–151). One general context in which stakeholders’ loyalty concerns are likely to come to the forefront are interorganizational interactions in which third-party professional agents represent contesting corporate principals. Such interactions could include asset acquisitions, mergers, divestitures, and corporate litigation, in which corporate principals retain the services of lawyers, consultants, bankers, real estate professionals, and other agents to represent them and negotiate on their behalf. Loyalty, conceived as partiality toward an entity in attitudes and behaviors (Hildreth, Gino,

¹ By focusing on past collaboration between rivals, the present application of the embeddedness perspective does not require stable interaction roles between pairs of actors. Stable interaction roles sustain collaboration by consistently aligning the overarching interests and objectives of parties in the relationship (Montgomery, 1998). For example, actors in the roles of supplier and manufacturer repeatedly exchange raw materials for cash (e.g., Uzzi, 1997). Alongside these relationships, however, numerous situations require actors to occupy variable collaborator and rival roles (e.g., Khanna, Gulati, and Nohria, 1998; Yu, Subramaniam, and Cannella, 2013; Rogan, 2014). For example, telecom operators are fierce rivals in obtaining mobile users downstream but may collaborate in developing the upstream infrastructure by jointly co-investing in towers and fiber optics (Gulati, Sytych, and Tahilyani, 2014).

and Bazerman, 2016), is integral for establishing that agents' goals and behaviors are aligned with those of their principals. For agents, the paradox of past collaborative affiliations with rivals is that, although they can help facilitate future interactions, they can also cast a shadow over the actors' loyalty.

Agents are often bound by restrictive covenants, including contracts and non-compete clauses that preclude them from representing direct rivals of a former client. For example, a banker who worked on a project for the Kellogg Company may not be able to work on a project for General Mills, or a lawyer who represented Apple may not be able to work for Samsung. These restrictions help avoid spillovers of confidential competitive information to rivals. Professional ties among bankers, lawyers, consultants, and other agents who represent contesting principals, however, are beyond the scope of these regulations. In these interactions, agents who previously collaborated in representing one or more principals on the same side of a transaction may subsequently represent contesting principals on opposing sides of a different transaction. For example, two bankers who previously collaborated in syndicating a loan for the Coca-Cola Company and its partners may end up facing one another when representing the Kellogg Company and General Mills in a competitive bidding scenario. Similarly, two lawyers from different law firms may have collaborated in filing a lawsuit on behalf of Amazon and later litigate against one another when representing Apple and Samsung. The embeddedness perspective would lead us to anticipate that the collaborative history between rival agents would benefit their ability to communicate and work effectively toward a more collaborative outcome. Recognizing that an agent's collaborative history with the opposing agent may appear to principals as potentially compromising leads us to expect a different dynamic.

In line with agency theory, information and knowledge asymmetries limit principals' ability to completely control and monitor the behaviors of external agents (e.g., Eisenhardt, 1989; Sharma, 1997), but by securing agents' loyalty and commitment, principals can reduce opportunism and align the agents' goals and incentives with their own (Ross, Anderson, and Weitz, 1997). When agents have a collaborative history with rivals, however, their allegiance to their principal may appear to be compromised, and loyalty concerns are likely to emerge. In these instances, demonstrations of loyalty can provide a general assurance that agents are faithfully advancing their corporate principals' best interests, and it is reasonable to expect them to take some form of corrective action against former collaborators-turned-rivals and thereby demonstrate unwavering loyalty to their principals.

Compensatory Behaviors

Agents can try to establish uncompromising loyalty to their principals by engaging in compensatory behaviors: individual responses to real or perceived threats to one's identity (Ellemers, Spears, and Doosje, 2002) or desired image (Baumeister and Jones, 1978; Gollwitzer, Wicklund, and Hilton, 1982). For example, studies have shown that immigrants exposed to xenophobic rhetoric engaged in political efforts that asserted their group's positive value (Perez, 2015); males facing threats to their masculinity engaged in hyper-masculine behavior (Willer et al., 2013); and white people concerned with appearing prejudiced exerted more effort to be engaged and attentive during interracial

interactions (Neel and Shapiro, 2012). Threats to one's loyalty can evoke particularly strong compensatory responses, such as after Japan attacked Pearl Harbor in December 1941, when Japanese-Americans living in Hawaii volunteered in large numbers for U.S. military service (Niiya, 2014).

The loyalty concerns that a collaborative history with rivals raises could be met with two main variants of compensatory behaviors. In the first variant, compromised agents would attempt to establish their loyalty by increasing their level of effort and commitment toward the doubting principal. For example, a politician running against a former colleague from a rival party could campaign more extensively to win key demographics for their party; a banker coming from a collaborative project with a rival could work longer hours for the new clients; or a lawyer opposing a former collaborator could carry out more extensive due diligence. Although the principals may appreciate these behaviors, none of them creates social and psychological distance from the compromising affiliations to the rival agents. In network-analytic terms, an unstable triad would continue to persist; the two allies—the principal and its agent—lack an undisputed common enemy in the rival agent. Work on balance theory has shown that such triads are unstable, so continued association between the principal and the agent requires the relationship with the rival to become uniformly negative (Heider, 1946; Davis, 1963; Hummon and Doreian, 2003; Sytch and Tatarynowicz, 2014).

Considering this, the second and necessary variant of compensatory behaviors would be negative and would entail proactive efforts to create distance from the compromising relationship by attacking, undermining, or destabilizing the rival. Applying this concept of negative compensatory behaviors to the previous examples, the politician could smear the former colleague with negative campaign ads; the banker could aggressively poach clients away from former colleagues; or lawyers could refuse to cooperate in court proceedings with former collaborators. Although none of these behaviors can efface prior collaborative affiliations between now-rivals, these affiliations can be buried under a barrage of negative behaviors that effectively demonstrate loyalty to the current principals. Paradoxically, compensatory behaviors can turn a history of collaboration into a liability for future cooperative interactions.

When external agents represent principals, it is conceivable that negative compensatory behaviors may stem from compromised agents' motivation to uphold a reputation of loyalty, a central tenet across the professions (Albert and Whetten, 1985; Petriglieri, 2011; Vough et al., 2013). A collaborative history with a rival may be seen as deviating from unwavering loyalty, and the ensuing reputational concerns can pressure agents to engage in compensatory behaviors against former collaborators. Qualitative work has shown that lawyers often perceive aggressive behaviors toward the opposing side as a way to create value for the client, enhance attorneys' standing in their law firms, and ultimately boost their reputation as loyal agents of their principals' interests (Suchman, 1998). Thus agents with a history of collaboration with rivals can engage in uncooperative and hostile compensatory behaviors to safeguard their reputation for loyalty to their principals.

Negative compensatory behaviors may also stem from agents' impression management efforts to conform to their principals' expectations. Research has shown that executives engage in symbolic behaviors with respect to governance structures and policies to manage the impressions of board members,

shareholders, and stock analysts (Ashford and Tsui, 1991; Westphal, 1998; Porac, Wade, and Pollock, 1999). These external pressures tend to exacerbate executives' impression management responses. Westphal and Graebner (2010) documented how analysts' negative appraisals of a company tend to elicit communications from CEOs that convey increased board control of management.

External professional agents rely on principals for current and future professional opportunities and the associated income; therefore they are incentivized to manage their impressions (Vough et al., 2013) and may do so by engaging in uncooperative and hostile compensatory behaviors, particularly in situations that demand demonstrations of loyalty. For example, a banker helping a client acquire a target may sharply criticize a former colleague if that former colleague represents a new bidder that drives up the target's demands. Efforts to manage principals' impressions can plausibly influence the tenor of interactions between agents on opposing sides of an interaction, especially if their principals have an antagonistic relationship.

Situational Triggers of Negative Compensatory Behaviors

Although agents' past collaborative associations with now-rival agents can trigger negative compensatory behaviors, in the contemporary economy rivalry with former collaborators is common. Athletes are traded regularly between rival teams, and executives often move across competing companies, even under the constraints of temporal or geographic non-compete agreements. Similarly, agents employed by elite professional service firms in consulting, banking, and law often find themselves facing former collaborators across the aisle. The high incidence of rivalry between former collaborators could make such instances more normative and acceptable to the principals. It is therefore not surprising that past work on embeddedness has found that collaboration between rivals facilitates cohesion and collective action between them. For example, collaborative ties between managers of competing companies have been associated with the reduced risk of failure for those companies and an ability to charge higher prices (Ingram and Roberts, 2000; Ingram and Lifschitz, 2006).

Still, certain situations may trigger especially strong concerns about agents' loyalty when they have collaborated with rivals. Situational triggers are structural or contextual factors that recast agents' previous collaboration as problematic for fulfilling the principals' expectations. It is reasonable to anticipate that principals who are particularly likely to expect uncompromising loyalty from their agents may view the agents' allegiances with a rival unfavorably. We anticipate that expectations of agents' unbridled loyalty are especially likely when the relationship between their principals is markedly tense or antagonistic, such as when they compete intensely or have engaged in past conflict, which is likely to heighten the principals' awareness of and concern about their agents' potentially divided loyalties. Furthermore, because of the principals' prior conflict and intense competition, agents likely are aware that the principals could be suspicious of their collaborative experiences with the rivals, which may raise loyalty concerns that could result in principals' exerting pressure on their agents to act discernably in the principals' interest. Furthermore, agents in these situations are more likely to experience reputational pressures to act in a

conspicuously loyal manner to their principal, motivated by their professional standards, the need to maintain an uncompromised career image, and perhaps their future career prospects.

Although both competition and past conflict are likely to increase tension among rivals, each taps into distinct constructs. Traditionally, competition has been defined as overlapping resource demands in the presence of limited resources or as “interaction without social contact” (Park and Burgess, 1921: 278–282; Ingram and Yue, 2008: 276). The aggressive motivation to increase one’s advantage over an out-group that often accompanies intense competition may heighten principals’ concerns about the loyalty of agents who have a history of collaboration with the rival (Halevy, Weisel, and Bornstein, 2012). In contrast, conflict entails direct social contact and negative affect with respect to the adversary (Deutsch, 1973; Ingram and Yue, 2008; Sytch and Tatarynowicz, 2014). As such, in addition to contestation over resources, past conflict also entails “recurring sets of negative judgments, feelings, and behavioral intentions toward others” (Labianca and Brass, 2006: 597). While we anticipate that intensely competitive or conflictual principals act as situational triggers for agents’ compensatory behaviors, we expect stronger effects to be associated with conflict because conflicting parties are prone to polarize others, creating a sharp in-group–out-group or us-versus-them distinction (Sherif et al., 1961; Brewer, 1979, 1999; Hewstone and Greenland, 2000). These circumstances are likely to elicit particularly strong responses from agents to allay principals’ loyalty concerns.

The preceding discussion indicates that situational triggers may stimulate both principals’ pressure on agents to demonstrate their loyalty and the agents’ intrinsic desire to maintain a reputation for loyalty. Of course, disentangling the exact psychological motivations of agents’ compensatory behaviors is challenging; for example, the agents’ reputational concerns can result in impression management efforts and vice versa. In either case, the expected behavioral outcomes are identical—namely, agents who are vulnerable to loyalty concerns are likely to compensate with uncooperative behaviors aimed at demonstrating social and psychological distance from the compromising former collaborator and now-rival. Such behaviors are likely to instigate conflict, thus paradoxically turning a history of collaboration into a catalyst for future conflict.

Thus the ability of former collaborators to work smoothly in their new roles as agents representing principals in a business engagement can be undermined when their principals have experienced conflict in the past or are in fierce competition with one another. Hence we predict:

Hypothesis 1a (H1a): A history of collaboration between opposing agents is associated with increased conflict when their principals have engaged in past conflict or compete intensely.

Hypothesis 1b (H1b): The relationship described in H1a is mediated by agents’ negative compensatory behaviors.

Economic Impact on Clients

Agents engaged in negative compensatory behaviors may be unable to capture benefits that previous research has identified in collaborations between rivals. Interactions devoid of threats and coercive power are more likely to result in

integrative solutions and carry out mutually beneficial tradeoffs (Deutsch, 1973; Tjosvold, 1998), which enhances negotiators' ability to create value (Galinsky et al., 2008). In contrast, negative interactions are largely ineffective in creating value for clients (e.g., Schneider, 2002) because hostile or uncooperative tactics lead rivals away from economically rational behavior, thereby harming performance (Kilduff, Elfenbein, and Staw, 2010).

Establishing loyalty via uncooperative compensatory behaviors toward rivals can therefore come at the expense of productive interactions that maximize joint outcomes. Uncooperative behaviors can also lead the other party to disengage and be less inclined to identify integrative solutions, share information, and experiment with creative resolutions, behaviors that ultimately limit value creation (Weingart, Hyder, and Prietula, 1996; Tinsley, O'Connor, and Sullivan, 2002; Gulati and Sytch, 2007). A history of collaboration among opposing agents can thus result in suboptimal, value-destroying economic outcomes. Past conflict or intense competition between clients can propel opposing agents with a history of collaboration into a vicious spiral of uncooperative interactions that are detrimental to their principals' economic outcomes (Bacharach and Lawler, 1981; Huang and Wu, 1992).

This conjecture is not unequivocal; rival agents could enact negative compensatory behaviors while simultaneously maintaining the ability to coordinate and communicate in pursuit of their clients' best economic interests. Goffman (1959: 125) described how American lawyers typically wait for a discreet backstage recess to fraternize with opposing counsel about the case in progress, lest any conspicuous collegiality discredit the "dramaturgical performance of hostility" that clients expect. Negative compensatory behaviors could be thus interpreted as a primarily theatrical enactment of hostility for the purposes of demonstrating loyalty, which may not impinge on rival agents' ability to leverage their previous collaboration to pursue their clients' best economic interests. We therefore subject the following value-destroying hypothesis to empirical testing:

Hypothesis 2 (H2): A history of collaboration between opposing agents leads to worse economic outcomes for their principals when the principals have engaged in past conflict or compete intensely.

METHODS

Empirical Setting

We test our theory's predictions in the context of intellectual property (IP) disputes between corporate clients (principals) who are represented in litigation by external legal counsel (agents). This setting features major elements of the theory: intense competition and previous conflict between clients involved in litigation and a history of collaboration between opposing counsel. Moreover, litigation related to patents, trademarks, and copyrights is one of the most consequential forms of strategic action in the contemporary knowledge economy. Every year, about 6,000 IP cases involving thousands of companies are filed in U.S. federal courts. In 2015, median legal costs for large lawsuits (i.e., with more than USD \$25 million at risk) exceeded USD \$5 million, and median awards surpassed USD \$10 million, with payments greater than a billion dollars in extreme cases (Moore, 2000; Chien, 2013; American Intellectual Property

Law Association, 2015). This is all in addition to the indirect costs to companies of potentially having their IP invalidated, losing access to valuable markets, and being exposed to increased competition. Given the high stakes associated with IP litigation, intensely competitive or antagonistic clients are therefore likely to expect uncompromising loyalty from their lawyers.

Most interfirm litigation—IP litigation in particular—is largely client-based, meaning that lawyers follow clients whether the clients are filing or defending against legal action. Strict rules governing attorney–client privilege prevent a lawyer serving client *A* from later representing client *B* if doing so may be materially adverse to client *A*, even after the lawyer’s relationship with client *A* has formally ended (American Bar Association, 2019: Rule 1.9, Duties to Former Clients). These rules preclude the formation of unbalanced triads arising from having lawyers who served clients on opposite sides of litigation. By contrast, the law does not forbid unbalanced triads consisting of lawyers who have collaborated in representing the same side in one lawsuit (i.e., co-plaintiffs or co-defendants) and who subsequently represent opposing sides in another lawsuit with a different set of clients.

Lawyers’ collaboration. Lawyers from different law firms engage in deeply coordinated, collaborative work when representing clients on the same side of a given lawsuit (e.g., Briscoe and Rogan, 2015). One experienced litigator we interviewed emphasized the need for close coordination among lawyers working on the same side of the case: “You need to coordinate . . . to make sure that you don’t take a position that would blow up a position the other [law] firms are going to take.”² Consider, for example, the coordination required among a team of lawyers from several law firms representing co-plaintiffs in a typical patent litigation lawsuit. A usual first line of defense for the alleged infringer (i.e., the defendant) is to contest the validity of the patent in question. In turn, lawyers on the plaintiff’s side—usually those with the strongest technical background—fight invalidation by narrowing the interpretation of the disputed patent’s claim. At the same time, the more experienced litigators on the plaintiff’s team aggressively try to broaden the interpretation of the patent’s scope to increase their chances of proving infringement. Close collaboration and coordination in this case is essential to ensure that the plaintiff’s team balances these contradictory positions. Several lawyers we interviewed specifically commented that they need to work together closely so that none of them says anything in court that “would narrow the patents in a way where you could not prove infringement.” Similarly, on the defendant’s side, several interviewees commented on the potential efficiencies gained from defending certain issues collectively. One lawyer observed, “You’ve got ten people trying to invalidate the patents, and then you could all go out; you could all find some different prior art, collect it together, research it together. . . .”

² To understand how the theorized dynamics could apply in the empirical context at hand and to inform our quantitative analyses, we conducted more than 50 semi-structured interviews with external legal counsel and in-house lawyers, as well as federal judges and their clerks. Nearly three quarters of these interviews were with practicing lawyers working in the U.S. offices of 14 large and mid-sized law firms. Fieldwork also included conversations with several in-house legal personnel with experience hiring external counsel for two large organizations, as well as three federal judges and several clerks from courts in the southern and eastern U.S.

In line with the embeddedness perspective, our fieldwork revealed that lawyers share the expectation that past collaboration smooths interactions with opposing legal counsel. As one litigator commented, “I could probably reach a better compromise for my client, probably settle before we have to go to a trial, if I’ve worked with you before, and I know how you are. . . . I’d rather work against somebody who I know and I trust.” Having previously collaborated with opposing counsel could improve the quality of communication and facilitate coordination, which is particularly valuable in negotiating the numerous procedural issues that arise during litigation. These procedural matters are not trivial; indeed, mistakes are common in complex proceedings, which typically involve exchanging thousands of documents over several months. One interviewee shared how previous collaboration with opposing counsel can lubricate these interactions during litigation: “Even if they’re really good lawyers, you know that there’s flexibility on both sides if there’s a mistake . . . some clerical error, or something along those lines. They’re not going to stick it to you, and you’re not going to stick it to them.”

Clients’ loyalty concerns. Standards of professional conduct indicate that lawyers are expected to “zealously assert the client’s position” (American Bar Association, 2019: Preamble). Despite the possible benefits discussed, some clients may view a collaboration with opposing counsel with suspicion. Lawyers may therefore prefer to avoid drawing attention to previous collaborations with opposing counsel. A senior in-house attorney commented on lawyers’ discretion when explaining criteria for hiring external legal counsel: “Relationships to the other side [are] not something that is advertised [by external counsel] when we are deciding who to hire. . . . I may not want someone who’s afraid of hurting their relationship if I want the external counsel to stick it to them [the opposing party].” Once hired, lawyers who have collaborated with opposing counsel are likely to be more sensitive to and aware of clients’ potential loyalty concerns. Pressures to proactively demonstrate loyalty intensify when lawyers represent counterparties to litigation that compete intensely for market share or technological dominance or that have previously litigated against one another. A commercial litigator with more than 10 years of experience shared that such clients “can make it difficult to work with opposing counsel, especially when they have the desire and the resources to punish the other side.” One of the federal judges we interviewed echoed this sentiment: “Counsel can be cordial and rational, and they can come to a reconciliation that is beneficial for their clients. In other situations, they lock horns; there is palpable distrust. . . . Some of it is client-driven.”

Data and Sample

We test our theory using extensive data on the outcomes and characteristics of participants in instances of intellectual property (IP) litigation, which in the United States falls under the primary jurisdiction of the 94 federal district courts. Per Code of Federal Regulations 17 §229.103, companies filing with the Securities and Exchange Commission (SEC) are required to disclose “any material pending legal proceedings.” Using the Ives Group’s Audit Analytics’ litigation module database, we extracted the population of IP lawsuits filed in U.S.

federal district courts from January 2000 to April 2015 that involved at least one SEC registrant.³ This approach yielded 5,183 IP lawsuits.⁴ Because our main dependent variables pertain to the duration of legal proceedings and the type of case resolution, we eliminated 126 cases that were still open as of July 2017. In addition, we eliminated 144 cases with missing information about the external counsel involved or filing errors, such as the same entity appearing as both the plaintiff and the defendant in a lawsuit. The final sample of 4,913 cases involved 11,206 unique corporate plaintiffs and defendants, as well as 21,757 external lawyers representing them.

We subsequently extracted the names of all participating plaintiffs, defendants, and lawyers using the Public Access to Court Electronic Records (PACER) system and complemented searches using LexisNexis's Lex Machina database. We also used these databases to obtain case outcomes and filing and termination dates. Records of lawyers' biographical details, careers, and educational attainments were collected from the Martindale–Hubbell Legal Directory, which provides information on current firm affiliation, rank (e.g., associate or partner), law school affiliation, and graduation year. We obtained litigating companies' industry information from Compustat and the SEC's Electronic Data Gathering Access and Retrieval (EDGAR) service, and firms' patent portfolios from the U.S. Patent and Trademark Office (USPTO). In addition, we collected and coded detailed procedural information for every lawsuit, allowing us to capture compensatory behaviors empirically.

Dependent Variables

Both extant legal research and our interviewees converge on the fact that longer cases and those proceeding to trial represent a significantly more acrimonious outcome than a quick, voluntary out-of-court settlement. With a trial, parties fail to reach a voluntary agreement and instead must rely on the judge and jurors for adjudication (e.g., Grossman and Hoffman, 2010). To test hypotheses 1a and 1b, we therefore used two dependent variables to capture conflict escalation. First, *escalation to trial* takes a value of 1 for cases that required a bench or jury trial for adjudication and 0 otherwise. In our data, about 22 percent of the cases escalated to trial, 63 percent were settled by the parties out of court, and the remaining 15 percent were transferred to a different court or consolidated into related cases featuring the same parties. Second, *case duration* measures the number of days from the lawsuit's initiation to its adjudication by a district or an appellate court. We applied a natural-log transformation to the *case duration* variable to eliminate the heavy right skew and normalize

³ Non-practicing entities (NPEs), commonly known as patent trolls, can also initiate patent infringement litigation. These are organizations that do not engage in the production of goods or service delivery, focusing instead on amassing patents and extracting royalties from other organizations. The present study's focus on SEC registrants mitigates concerns about the presence of NPEs in our data, because NPEs typically attack smaller companies and startups, which can be cajoled into quick settlements (Moore, 2000; Chien, 2013). On average, only 6 percent of lawsuits in our data were filed by NPEs. Because NPEs' objectives in litigation may differ from those of traditional business entities, we include the *Plaintiffs include NPE* control variable in all of our models.

⁴ We relied on a lawsuit's Nature of Suit (NOS) codes to identify IP litigation, which encompasses patent infringement (NOS 830), copyright violations (NOS 820), and trademark violations (NOS 840). Patent infringement lawsuits comprised 89 percent of our final sample. The remaining cases were split roughly evenly between trademark and copyright infringements.

the distribution. After controlling for case complexity and court-specific and year-specific fixed effects, shorter cases reflect more cooperative proceedings between opposing litigants.

To test hypothesis 2 on companies' economic outcomes, we investigated how case terminations affected companies' stock prices. We first matched the identity of litigating companies in our dataset to companies included in the Center for Research in Security Prices (CRSP) database.⁵ We found valid stock return data for 1,063 companies that participated in 2,390 lawsuits as either plaintiffs or defendants. Using the Eventus system, we subsequently captured *cumulative abnormal returns* using a market model for three time intervals, ranging from d (the day on which the lawsuit was terminated) until $d+2$ (two days after termination): $[d]$, $[d; d+1]$, and $[d; d+2]$. Consistent with prior work, we estimated the market model using the S&P 500 weighted index from 240 days before case termination until 10 days before case termination to estimate the market model parameters (Barber and Lyon, 1997; Cowan, 2007).

Independent Variables

Given that plaintiffs' and defendants' legal teams typically include multiple lawyers, we operationalized *lawyers' collaborative history* as the proportion of opposing lawyer dyads in the focal case that collaborated in the past, representing the same side in litigation. This variable captures the degree to which the plaintiffs' and defendants' lawyers, who oppose one another in the focal lawsuit, collaborated in prior litigation.

We operationalized situational triggers using three variables that capture pressures on lawyers to be and appear loyally committed against opposing counsel. Past conflict between clients (the first trigger) is captured by *adversarial clients*, which measures the proportion of plaintiff–defendant company dyads in the focal case that previously litigated against one another. For example, in January 2011, Butamax Advanced Biofuels first filed a patent infringement lawsuit against Gevo, Inc. on a compound used in producing a specialized corn-based alcohol. The initial case is not coded as having *adversarial clients*. In the course of the next two years, however, tensions escalated between Butamax and Gevo as the companies filed additional patent infringement lawsuits against one another. The *adversarial clients* indicator receives a value of 1 for those subsequent lawsuits between Butamax and Gevo.

We followed extant research in operationalizing the situational trigger of clients' competition. First, *clients' industry overlap* captures the proportion of opposing (plaintiff–defendant) company pairs in the focal case whose operations overlap in at least one 4-digit SIC code (Polidoro, Ahuja, and Mitchell, 2011). *Clients' technological overlap*, in turn, is the proportion of opposing company pairs in the focal case whose patents prior to the focal lawsuit filing date include citations to any of the opposing party's patents (Mowery, Oxley, and Silverman, 1998). We obtained data on cross-citations from the USPTO. Taken together, these measures capture the intensity of both downstream and

⁵ An alternative way to capture a lawsuit's economic impact on clients is to compare valuations of litigated patents, trademarks, and copyrights with out-of-court settlement amounts. The objectivity of these valuations, however, is typically highly contested. In addition, the courts seal a majority of settlements, precluding both the media and the general public from accessing information about the settlement's terms.

upstream market competition, which is a potential source of pressure on lawyers to be and appear loyally committed to their clients. Our key independent variables are therefore the interactions of *lawyers' collaborative history* with the three variables measuring situational triggers: (1) *Collaborative history* × *Adversarial clients*; (2) *Collaborative history* × *Clients' industry overlap*; and (3) *Collaborative history* × *Clients' technological overlap*.

Mediating Variable: Compensatory Behaviors

Negative compensatory behaviors are clearly seen in lawyers' varying levels of civility surrounding procedural matters. The lawyers we interviewed observed escalating tensions when opposing counsel were unwilling to accommodate minor requests, such as rescheduling a hearing by a day because someone's child is sick or providing an extension to prepare a brief. External legal counsel retain substantial autonomy over these matters: "The lawyer, and not the client, has the discretion to determine the customary accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights" (American College of Trial Lawyers, 2009: 4). These important voluntary agreements can take place provided cooperation with opposing counsel does not threaten perceptions about the lawyers' loyalty to their clients' wishes. Real or perceived client pressures to demonstrate loyalty would deter lawyers from pursuing such explicit gestures of cooperation, instead leading them to reject the opposing counsel's requests for reasonable concessions. For lawyers who have collaborated with the opposing counsel, negative compensatory behaviors may include refusals to stipulate over procedural matters.

Judges naturally favor stipulations because they simplify legal proceedings and help shorten litigation. The courts, however, cannot impose these agreements; the opposing sides must conceive and enter into them voluntarily. When opposing lawyers are unable to agree on procedural matters, the judge must intervene. This prolongs discovery and negotiations and makes it more difficult to resolve the parties' substantive issues.

To test hypothesis 1b, we aimed to empirically capture emergent compensatory behaviors, which are expected to mediate the effect of the interaction between *lawyers' collaborative history* and the three variables measuring situational triggers on the duration of legal proceedings and the likelihood of escalation to trial. Using a combination of text-parsing algorithms and extensive manual validation, we analyzed the docket entries (i.e., legal summaries) of all cases included in our study. We counted the percentage of all entries that referred to stipulations and agreements between opposing counsel. These entries described agreements to protect the mutual confidentiality of client information revealed during the proceedings or to limit the scope of issues at stake. They also featured stipulations on procedural issues, such as extending time to respond to a motion or submit a document, rescheduling an event, relaxing the page limit on a submission, or amending an erroneous filing.⁶ Formally, the variable *compensatory behavior* was calculated as 1 minus the

⁶ In addition to stipulations and agreements, the docket report includes motions, objections, and oppositions to motions, as well as neutral entries such as court minutes, notices, exhibits, depositions, and court orders.

percentage of entries in the legal docket that referenced a stipulation or similar agreement. We used the percentage of entries to account for variation in the overall frequency of filings in the case and the inverted measure to allow for an interpretation of the statistical results that is aligned with the directionality of our arguments. Online Appendix A (<http://journals.sagepub.com/doi/suppl/10.1177/0001839219877507>) includes sample entries from cases scoring high and low on the *compensatory behavior* measure.⁷

Control Variables

To ensure the robustness of our results, we incorporated a comprehensive set of control variables to account for the characteristics of the case, the features of the litigating clients, and the quality and experience of the lawyers representing these clients. All of these variables could potentially affect lawyer selection and case outcomes; see table 1 for details.

Our first group of controls aims to capture the complexity of and the stakes in the focal legal case: a binary variable taking the value of 1 for copyright or trademark cases and 0 for patent cases; the number of patents litigated (natural log); the number of company dyads (natural log); and the number of opposing counsel lawyer dyads involved in a case (natural log). Patent cases and those that involve a larger number of patents, litigating clients, and lawyers are likely to be both more complex and consequential for the clients involved.

The second group of controls accounts for the central characteristics of the litigating clients, computed separately for plaintiffs and defendants: a binary indicator taking the value of 1 if there is at least one NPE (patent troll) and 0 otherwise; a binary indicator taking the value 1 if there is at least one *Fortune* 500 company and 0 otherwise; and the historical tendency of the clients to settle lawsuits, captured as the average percentage of cases settled from all cases involving any of the clients in the focal lawsuit.

Finally, we controlled for the quality, experience, and expected behaviors of lawyers on both sides by including the following variables: the lawyers' historical tendency to settle lawsuits, captured as the average percentage of cases the lawyers settled prior to the focal case; the size and status of the law firms involved, captured as the average number of IP litigators working for the law firms involved and the percentage of law firms listed among the top 250 law firms in the *National Law Journal's* annual survey, respectively; the quality of lawyers involved, measured as the proportion of lawyers who graduated from one of the top 14 law schools and the proportion of partners; and the lawyers' competitive history, measured as the proportion of opposing lawyer dyads who previously litigated against one another.

⁷ Perhaps the most indisputable demonstration of negative compensatory behaviors is accusing opposing counsel of violating Rule 11 of the Federal Rules of Civil Procedure. Violating Rule 11 requires arguing that opposing counsel engaged in deliberate harassment, presented frivolous arguments, or caused unnecessary delays that needlessly increased the cost of litigation. These are serious allegations that may result in fines paid to the court or to the other party; as such, they are rare. In our data, lawyers accused opposing counsel of violating Rule 11 in 130 cases (less than 3 percent of the sample), which precluded their systematic analyses. A t-test revealed that accusations of violating Rule 11 were more common in cases scoring above the median for *compensatory behaviors* ($p < .01$).

Table 1. Control Variables

Variable	Description and Rationale
Case complexity	
Trademark or copyright infringement	A binary variable taking the value of 1 in cases in which the Nature of Suit referred to trademark or copyright infringement.
Number of patents litigated	The natural logarithm of the number of patents litigated in a given case. Patent litigation complexity is an increasing function of the number of patents that were allegedly infringed.
Number of lawyer dyads	The natural logarithm of the number of plaintiff–defendant lawyer pairs controls for the legal complexity of the case. Highly complex cases can feature a significant number of lawyers on each side, with some lawyers specializing in discovery, others in the validity of the patent, and yet others in presenting arguments before the court.
Number of company dyads	The natural logarithm of the number of plaintiff–defendant company pairs controls for coordination complexity related to the grievances and strategic priorities of a large number of plaintiffs and defendants.
Party characteristics	
Plaintiffs include NPE	A binary variable taking the value of 1 if at least one plaintiff was identified as a non-practicing entity (NPE) and 0 otherwise. NPEs (patent trolls) do not sell any products or services and instead generate revenue by licensing their patents. We matched the plaintiffs and defendants in the present study against a comprehensive list of 2,743 NPEs. We compiled this list from leading Internet resources that assemble data on NPEs: plainsite.org, ipcheckups.com, and nonpracticingentities.wordpress.com (last accessed June 2016).
Includes <i>Fortune</i> 500 (2 variables)	A binary variable taking the value of 1 when a case involved at least one plaintiff or defendant listed in the <i>Fortune</i> 500 in the year in which the focal lawsuit was filed and 0 otherwise.
Clients' settlement likelihood (2 variables)	The average percentage of cases settled by <i>plaintiffs</i> and <i>defendants</i> before the start of the focal case. These variables control for the toughness and vulnerability of parties involved.
Lawyer characteristics	
Lawyers' settlement likelihood (2 variables)	The average percentage of cases before the start of the focal case settled by the lawyers representing each party.
% top law firm (2 variables)	The percentage of law firms listed in the top 250 of the <i>National Law Journal's</i> Annual Survey of the Nation's Largest Law Firms during the year before the start of the focal case. Separate measures are calculated for plaintiffs' and defendants' law firms.
Law firm size (2 variables)	Average number of "active" IP litigators for law firms representing the plaintiff and defendant, respectively. Active IP litigators are those who were named in any ongoing case from our sample at the time the focal lawsuit was filed. These measures help control for the amount of organizational resources available to law firms and their clients.
Lawyers' competitive history	The proportion of opposing (plaintiff–defendant) lawyer pairs in the focal case who have previously litigated against one another. This measure captures the degree to which opposing counsel have prior experience opposing one another. Unlike past collaboration, past competition gives clients no reason to question loyalty. In terms of balance theory, past competition between opposing counsel strengthens a structure of balanced opposition (Cartwright and Harary, 1956).
% top JD (2 variables)	The proportion of lawyers on each side of a case who obtained their law degree from one of the top 14 law schools (known as T14 in legal circles) according to <i>U.S. News and World Report</i> . This is a proxy for the quality of legal representation available to each party.
% partners (2 variables)	The proportion of lawyers on each side of a case who had made partner by the time of filing. These variables proxy for the experience of legal representation available to each party.

Analyses

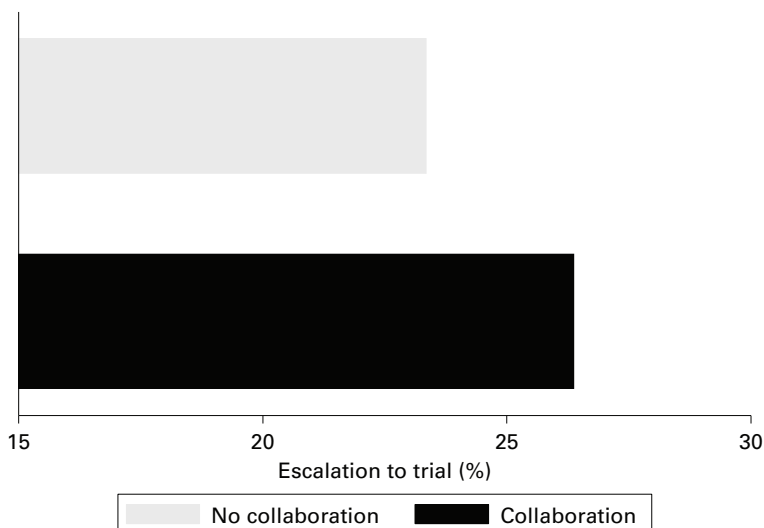
We hypothesized that in the presence of situational triggers—past conflict or intense competition between litigating parties—a history of collaboration between opposing counsel leads to lengthy litigation and the lawsuit’s escalation to trial. We graphically illustrate these patterns in our raw data. Figure 1a illustrates that in the presence of situational triggers, the percentage of cases escalating to trial increases from 23 to 26 percent depending on whether opposing counsel have collaborated previously.

Figure 1b shows a kernel density distribution plot of the duration in months of cases with situational triggers. The difference between the solid and dashed curves suggests that cases in which lawyers on opposite sides had a history of collaboration last longer than cases in which no such collaboration had taken place. This descriptive evidence with respect to both escalation to trial and lawsuit duration is consistent with hypothesis 1a.

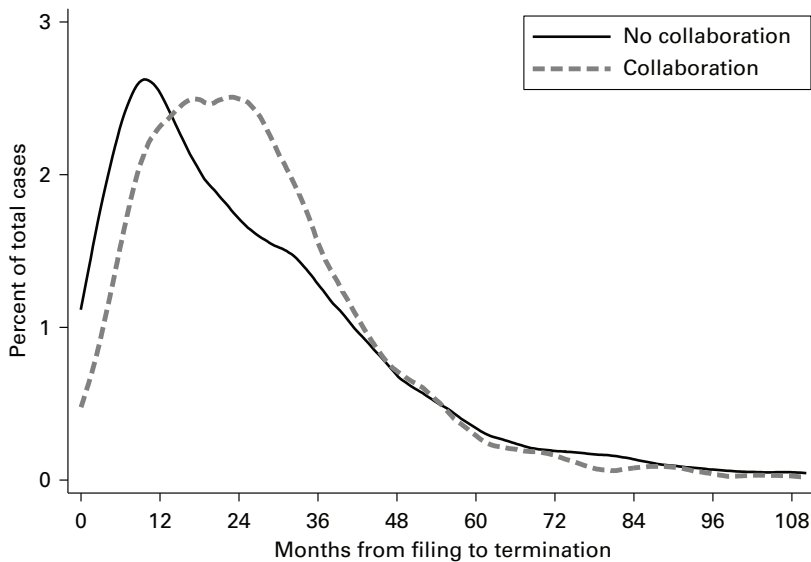
To formally test hypothesis 1a, which predicted the probability of a case escalating to trial and lawsuit duration in days (logged), we used a logistic regression and an OLS regression, respectively. All regressions include fixed effects for each federal court to control for court-specific heterogeneity in local procedural rules and adjudication tendencies (LoPucki and Whitford, 1991; Moore, 2001). We also included year fixed effects to account for the evolution of IP-relevant legislation and legal precedent over time.

We tested hypothesis 1b, which predicted the mediation effect for hypothesis 1a, in two steps. In the first step, we used an OLS regression to assess whether our central independent variables (the interaction terms between *lawyers’ collaborative history* and *adversarial clients*, *clients’ industry overlap*, or *clients’ technology overlap*) had a statistically significant effect on the mediating *compensatory behavior* variable. In the second step, we explored whether the mediating variable of *compensatory behavior* had a statistically significant effect

Figure 1a. Percent of lawsuits with triggers going to trial, by lawyers’ collaboration.*



* Triggers refer to cases with clients’ technological overlap, industry overlap, or in which clients have previously litigated. Figure based on 770 cases with lawyers’ collaboration and 1,251 cases without.

Figure 1b. Duration of lawsuits with triggers by lawyers' collaboration (kernel density plot).*

* Triggers refer to cases with clients' technological overlap, industry overlap, or in which clients have previously litigated. Figure based on 770 cases with lawyers' collaboration and 1,251 cases without. We rescaled the y-axis to approximate percentages.

on the dependent variables: *escalation to trial* and *case duration*. As with the tests for hypothesis 1a, we used a logistic and an OLS model for these analyses, respectively. We then estimated the mediated effect using the product-of-coefficients approach (MacKinnon et al., 2002). This tested whether the indirect effect (i.e., the one channeled through the mediator) of each of the three interaction terms on the dependent variables was statistically significant.

The product-of-coefficients analytical strategy assumes that the error terms in the regressions used in steps 1 and 2 described above are uncorrelated. This condition is violated in many empirical settings, leading to inconsistent estimates of the mediation effect. This issue can be overcome by using a two-stage least squares estimator to obtain *predicted* values for the mediating variable in step 1; these predicted values are then used in the regressions for case outcomes in step 2 (Shaver, 2005).

To identify the system of equations and obtain the predicted values of the mediating *compensatory behavior* variable, we used the instrumental variable *members of local bar (%)*. For a given lawsuit, this variable captures the percentage of all participating lawyers who are members of the local bar association in the state in which the court is located. This instrument satisfies the relevance condition; that is, it is likely to predict *compensatory behavior*. Indeed, judges expect lawyers who are members of the local bar to be aware of and compliant with the courtroom's local rules of behavior, including making reasonable efforts to facilitate procedural matters with their counterparts.⁸ This

⁸ Consistent with this expectation, this variable was negatively related to compensatory behaviors, even after controlling for all other independent and control variables (model 1, table 4). We did not find evidence consistent with weak instruments according to the Kleibergen–Paap (2006) weak instrument test at the 90-percent confidence level ($p < .10$).

instrument is also likely to satisfy the exclusion condition, because local lawyers' impact on case outcomes is typically channeled by maintaining civil norms of behavior in the courtroom and helping reach voluntary agreements. To calculate *members of local bar (%)*, we first identified lawyers in a case who filed *pro hac vice* motions, meaning the lawyer was not a member of that state's bar and therefore required special permission from the judge to participate in the lawsuit. Lawyers who participated without filing a *pro hac vice* motion were counted as members of the local bar.

Finally, because the distribution of cumulative abnormal returns approximated a normal distribution, we tested hypothesis 2 using OLS regression models. Consistent with the recommendations of prior research (McWilliams and Siegel, 1997), we purged our data of all lawsuit terminations that occurred within a five-day window of another firm-specific material event reported in the *Wall Street Journal*. Such material events included new product announcements, acquisitions, layoffs, or major executive changes. This led us to drop 6 percent of firm–case pairings (210 of 3,757) from the analysis of abnormal returns. The OLS models estimating abnormal returns also include fixed effects for the fiscal quarter and each firm's primary four-digit SIC code, as well as binary controls for whether the firm acted as the plaintiff or defendant and whether the trial verdict found in favor of or against the focal firm. The controls for trial outcomes allow us to focus on the market's firm-specific reaction to a case termination regardless of the court's verdict.⁹ In all models, we computed robust standard errors adjusted for clustering at the court level.

RESULTS

Table 2 displays the descriptive statistics and zero-order correlations for all variables. Given that we use both linear and nonlinear estimation, we checked for multicollinearity by computing the variance inflation factors (VIFs) and condition indices. For both metrics, the obtained statistics were well within the recommended ranges: around 4 for VIFs and around 16 for condition indices.

Hypothesis 1a predicted that a history of prior collaboration between lawyers representing adversarial or competitive clients is associated with a higher likelihood of escalation to trial and longer legal proceedings. The results in models 2, 3, and 4 in table 3 support hypothesis 1a for escalation to trial, showing a statistically significant positive interaction effect of *lawyers' collaborative history* with each of the three variables measuring situational triggers—*adversarial clients*, *industry overlap*, and *technology overlap*—on the odds of a lawsuit escalating to trial. Similarly, the results in models 6, 7, and 8 in table 3 provide empirical support for hypothesis 1a with respect to case duration, showing a statistically significant positive effect on the duration of the legal case from the interaction between *lawyers' collaborative history* and each of the three variables measuring situational triggers. In line with the traditional embeddedness view of collaboration, it is noteworthy that the main effect of *lawyers'*

⁹ The market's reaction is often based on information that extends beyond the legal outcome of the focal case (i.e., the verdict). For example, the market reaction can factor in the costs of achieving the victory, changes to the firm's patent claims or invalidation of certain patents, the extent of continued legal exposure, and the risk of retaliatory litigation. It is also conceivable that information could leak regarding private settlements.

Table 2. Summary Statistics and Correlations (N = 4,913 Lawsuits)

Variable	Mean	S.D.	1	2	3	4	5	6	7	8	9	10	11	12
1. Escalation to trial	.22	.41												
2. Case duration ln(days)	7.52	4.60	.11											
3. Number of lawyer dyads	3.35	1.46	.19	.16										
4. Number of company dyads	1.38	.77	.09	.09	.43									
5. % top law firm (defendant)	.47	.36	-.03	.00	.09	-.06								
6. % top law firm (plaintiff)	.40	.40	.05	.01	-.03	-.13	.10							
7. Law firm size (defendant)	2.62	.94	-.00	-.02	.35	.04	.55	.01						
8. Law firm size (plaintiff)	2.44	.97	.08	.02	.25	-.04	.08	.55	.23					
9. Plaintiffs include NPE	.06	.24	-.05	-.00	.15	.08	.02	-.14	.09	-.02				
10. Defendants include Fortune 500	.24	.43	.01	.01	.29	.34	.05	-.17	.16	-.06	.12			
11. Plaintiffs include Fortune 500	.11	.31	.02	-.04	.03	.02	-.02	.09	-.00	.16	-.04	-.04		
12. Lawyers' competitive history	.13	.25	-.07	.07	-.07	.01	-.05	.03	.02	.07	.03	.01	.09	
13. Clients' settlement likelihood (defendant)	.31	.37	-.02	.08	.25	.20	.06	-.13	.22	.01	.15	.27	-.04	.11
14. Clients' settlement likelihood (plaintiff)	.22	.37	-.01	.07	.06	.01	.03	.09	.07	.20	.03	-.03	.19	.12
15. Lawyers' settlement likelihood (defendant)	.49	.34	-.03	.06	.33	.10	.13	-.08	.35	.14	.11	.11	-.03	.06
16. Lawyers' settlement likelihood (plaintiff)	.50	.34	-.04	.07	.27	.07	.05	-.02	.22	.22	.10	.07	-.00	.10
17. Trademark/copyright infringement	.11	.32	-.03	-.06	-.23	-.06	-.00	-.00	-.21	-.18	-.09	-.07	-.03	-.15
18. Log number of patents litigated	1.10	.67	.03	.13	.30	.08	.05	.09	.21	.27	.09	.05	.08	.08
19. % partners (defendant)	.21	.25	-.07	.05	.04	.01	.15	-.00	.17	.11	.05	.02	-.02	.08
20. % partners (plaintiff)	.18	.24	-.01	.07	.02	-.02	.06	.23	.07	.20	-.06	-.07	.03	.10
21. % top JD (defendant)	.25	.25	-.01	-.01	.03	-.05	.14	.02	.14	.04	.04	.02	-.02	-.05
22. % top JD (plaintiff)	.24	.26	.04	-.02	-.05	-.05	.04	.18	.03	.18	-.08	-.06	.09	.09
23. Clients' industry overlap	.10	.25	.01	-.04	-.03	-.14	.04	.12	.07	.16	-.03	-.03	.13	.04
24. Clients' technology overlap	.12	.28	.03	-.03	.05	-.13	.09	.09	.14	.18	-.00	.04	.17	.05
25. Adversarial clients	.16	.33	-.03	-.01	-.04	-.11	.01	.12	.07	.17	-.01	-.05	.13	.52
26. Lawyers' collaborative history	.05	.13	-.07	.01	-.09	.03	-.19	-.20	.01	-.00	.07	.05	-.01	.05
27. Compensatory behaviors	.61	.29	.14	.00	.18	.03	.01	.02	-.01	.01	.00	.06	.01	.01

(continued)

Table 2. (continued)

Variable	13	14	15	16	17	18	19	20	21	22	23	24	25	26
15. Lawyers' settlement likelihood (defendant)	.29	.14												
16. Lawyers' settlement likelihood (plaintiff)	.24	.20	.33											
17. Trademark/copyright infringement	-.15	-.11	-.23	-.24										
18. Log number of patents litigated	.16	.19	.23	.21	-.54									
19. % partners (defendant)	.16	.11	.18	.15	-.06	.09								
20. % partners (plaintiff)	.05	.11	.09	.13	-.01	.10	.10							
21. % top JD (defendant)	.00	-.02	.03	-.02	.03	-.00	.07	.01						
22. % top JD (plaintiff)	-.05	.06	-.05	-.03	-.01	.05	-.02	.12	.05					
23. Clients' industry overlap	-.02	.09	.03	-.01	-.07	.12	.00	.02	.07	.02				
24. Clients' technology overlap	.04	.15	.06	.02	-.11	.19	.01	.03	.06	-.00	.16			
25. Adversarial clients	.07	.13	.02	.04	-.13	.11	.07	.11	.10	-.01	.16	.21		
26. Lawyers' collaborative history	.13	.05	.13	.14	-.13	.06	.10	.02	.02	-.03	.03	.00	.05	
27. Compensatory behaviors	.01	.00	.01	.02	-.08	.08	-.05	-.00	-.06	-.04	-.02	-.00	.02	-.15

collaborative history has a marginally negative effect on the odds of escalation to trial in one of the models (model 3, table 3) and a strongly significant negative effect on case duration (models 5–8, table 3), implying lawyers with a history of collaboration have a greater ability to resolve a conflict swiftly.¹⁰

In terms of the magnitude of the reported effects, when *lawyers' collaborative history* equals zero, the probability of a case escalating to trial ranges from 16 to 18 percent across all observed values of *adversarial clients*.¹¹ Consistent with the embeddedness perspective, when most opposing lawyer dyads have a collaborative history based on prior litigation but clients have no prior litigation history (i.e., *adversarial clients* equals 0), the average probability of a case escalating to trial drops from 19 to about 5 percent. When all opposing client dyads have prior litigation history (i.e., *adversarial clients* equals 1), however, the increase in *lawyers' collaborative history* from 0 to 1 significantly raises the average likelihood of escalation to trial to about 27 percent as shown in figure 2, Panel A. We interpret the results at the extremes with caution given that we observed only 34 cases in which all lawyers involved shared a collaborative

¹⁰ Notably, the main effect of two of the situational triggers (industry overlap and adversarial clients) has a negative impact on case duration (see models 5–8 in table 3). This counterintuitive finding emerges because clients that file multiple related lawsuits against one another, such as adversarial clients or clients in the same industry, face the higher risk of having their cases consolidated with related cases or transferred to a different jurisdiction. Because case consolidation takes place early in a lawsuit, it leads to earlier average case termination.

¹¹ We used estimates from model 3, table 3 to calculate the marginal effects of the probability of the case escalating to trial and estimates from model 6, table 3 for the marginal effects on case duration. All control variables were kept at their mean values for these calculations.

Table 3. Effects of Opposing Counsels' Past Collaboration on Escalation to Trial and Case Duration*

Variable	Escalation to Trial				Case Duration			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Number of lawyer dyads	.622** (.052)	.626** (.052)	.624** (.053)	.625** (.051)	.839** (.075)	.842** (.076)	.840** (.074)	.844** (.077)
Number of company dyads	-.026 (.099)	-.026 (.099)	-.027 (.099)	-.028 (.098)	.125 (.076)	.124 (.077)	.123 (.076)	.122 (.077)
% top law firm (defendant)	-.252* (.106)	-.247* (.106)	-.249* (.105)	-.251* (.106)	.151 (.224)	.158 (.224)	.156 (.224)	.157 (.224)
% top law firm (plaintiff)	.089 (.142)	.096 (.141)	.091 (.142)	.089 (.142)	.197 (.160)	.206 (.161)	.201 (.161)	.198 (.160)
Law firm size (defendant)	.344** (.080)	.354** (.078)	.346** (.080)	.349** (.079)	-.182 (.143)	-.169 (.140)	-.181 (.143)	-.174 (.141)
Law firm size (plaintiff)	-.257** (.092)	-.248** (.091)	-.257** (.092)	-.257** (.092)	.184 (.156)	.195 (.151)	.185 (.156)	.183 (.158)
Plaintiffs include NPE	-.634+ (.335)	-.630+ (.332)	-.627+ (.333)	-.636+ (.333)	-.569** (.156)	-.563** (.155)	-.559** (.155)	-.567** (.155)
Defendants include <i>Fortune</i> 500	-.286* (.120)	-.294* (.121)	-.284* (.120)	-.288* (.122)	-.118 (.104)	-.124 (.104)	-.115 (.103)	-.127 (.104)
Plaintiffs include <i>Fortune</i> 500	-.062 (.149)	-.069 (.148)	-.057 (.150)	-.060 (.149)	-.457* (.206)	-.469* (.213)	-.452* (.200)	-.451* (.201)
Lawyers' competitive history	-.664** (.225)	-.640** (.227)	-.651** (.221)	-.664** (.224)	.753+ (.411)	.793+ (.434)	.763+ (.412)	.753+ (.406)
Clients' settlement likelihood (defendant)	-.167 (.108)	-.161 (.108)	-.166 (.108)	-.169 (.108)	-.216 (.157)	-.211 (.155)	-.215 (.157)	-.217 (.155)
Clients' settlement likelihood (plaintiff)	.161 (.115)	.156 (.114)	.161 (.115)	.159 (.114)	.191 (.253)	.181 (.247)	.189 (.253)	.187 (.252)
Lawyers' settlement likelihood (defendant)	-.127 (.140)	-.138 (.138)	-.124 (.144)	-.132 (.138)	-.342* (.149)	-.353* (.150)	-.341* (.148)	-.350* (.150)
Lawyers' settlement likelihood (plaintiff)	-.276* (.110)	-.274* (.109)	-.279* (.111)	-.275* (.110)	-.431* (.217)	-.428+ (.215)	-.434+ (.219)	-.427* (.214)
Trademark or copyright infringement	-.152 (.180)	-.158 (.180)	-.165 (.180)	-.160 (.181)	.436+ (.224)	.431+ (.226)	.427+ (.226)	.422+ (.229)
Log number of patents litigated	-.187* (.079)	-.188* (.081)	-.190* (.080)	-.191* (.079)	.234+ (.136)	.235+ (.135)	.233+ (.135)	.226 (.139)
% partners (defendant)	-.389** (.128)	-.396** (.126)	-.394** (.127)	-.386** (.128)	.086 (.346)	.069 (.337)	.076 (.342)	.085 (.347)
% partners (plaintiff)	.010 (.197)	.020 (.195)	.020 (.197)	.008 (.198)	.415 (.351)	.427 (.359)	.426 (.355)	.410 (.353)
% top JD (defendant)	-.210 (.170)	-.208 (.170)	-.216 (.170)	-.209 (.172)	.191 (.279)	.193 (.279)	.188 (.279)	.193 (.276)
% top JD (plaintiff)	.181 (.198)	.161 (.195)	.180 (.200)	.183 (.200)	-.281+ (.154)	-.307* (.144)	-.288+ (.153)	-.282+ (.154)
Clients' industry overlap	.066 (.145)	.071 (.145)	-.056 (.134)	.070 (.149)	-.360* (.180)	-.360* (.178)	-.471* (.232)	-.353* (.173)
Clients' technology overlap	.217+ (.121)	.216+ (.121)	.220+ (.121)	.145 (.146)	.070 (.145)	.073 (.146)	.073 (.145)	-.075 (.180)
Adversarial clients	-.073 (.210)	-.209 (.191)	-.078 (.208)	-.081 (.206)	-.540* (.268)	-.688** (.237)	-.548* (.265)	-.550* (.266)
Lawyers' collaborative history	-.926 (.747)	-1.554 (1.026)	-1.485+ (.902)	-1.234 (.829)	-.866** (.312)	-1.253** (.388)	-1.153** (.311)	-1.234** (.390)
Adversarial × Collaborative history		2.278* (1.046)				1.917** (.625)		
Industry overlap × Collaborative history			2.653** (1.005)				1.905** (.703)	

(continued)

Table 3. (continued)

Variable	Escalation to Trial				Case Duration			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Technology overlap × Collaborative history				1.824** (.657)				2.894** (.622)
Constant	-2.127** (.319)	-2.119** (.317)	-2.088** (.320)	-2.128** (.318)	22.120** (1.303)	22.044** (1.324)	22.113** (1.306)	22.120** (1.303)
Observations	4864	4864	4864	4864	4913	4913	4913	4913
Wald test (against model 1)		6.01*	6.91**	6.99**				
F test (against model 5)						9.42**	7.34**	21.65**

+ $p < .10$; * $p < .05$; ** $p < .01$.

* All models include year and court fixed effects. Robust standard errors clustered by court are in parentheses.

history. At the same time, we observed more than 1,600 cases (one-third of the full sample) with some collaboration between opposing counsel and nearly 400 cases in which at least 20 percent of the lawyers previously collaborated. For the cases in which 20 percent of the lawyers previously collaborated, the likelihood of escalation to trial increased from 14 percent when none of the clients had previously litigated to 18 percent when all opposing clients had a history of prior litigation (i.e., clients were adversarial). By the same token, even when the lawsuit involved adversarial clients but none of the opposing lawyers had previously collaborated (i.e., *lawyers' collaborative history* equals 0), cases were usually resolved in less than three years as shown in figure 2, Panel B. When highly adversarial clients had opposing lawyers who all shared a prior collaborative history, however, the average duration of the case increased by about 30 months.¹²

Consistent with the two-stage least squares approach outlined above used to test mediation in hypothesis 1b, we estimated a set of first-stage regressions that include the instrument, *members of local bar (%)*, and the full set of controls to obtain predicted values for the mediator, *compensatory behavior*. All models in table 4 show that *members of local bar (%)* has a negative and statistically significant effect on *compensatory behavior*, which supports the relevance condition.¹³ Also, the variable *adversarial clients* has a strong positive effect on compensatory behaviors, which lends support to prior litigation history being associated with heightened hostility between clients. The results from models 2, 3, and 4 in table 4 suggest that situational triggers can lead

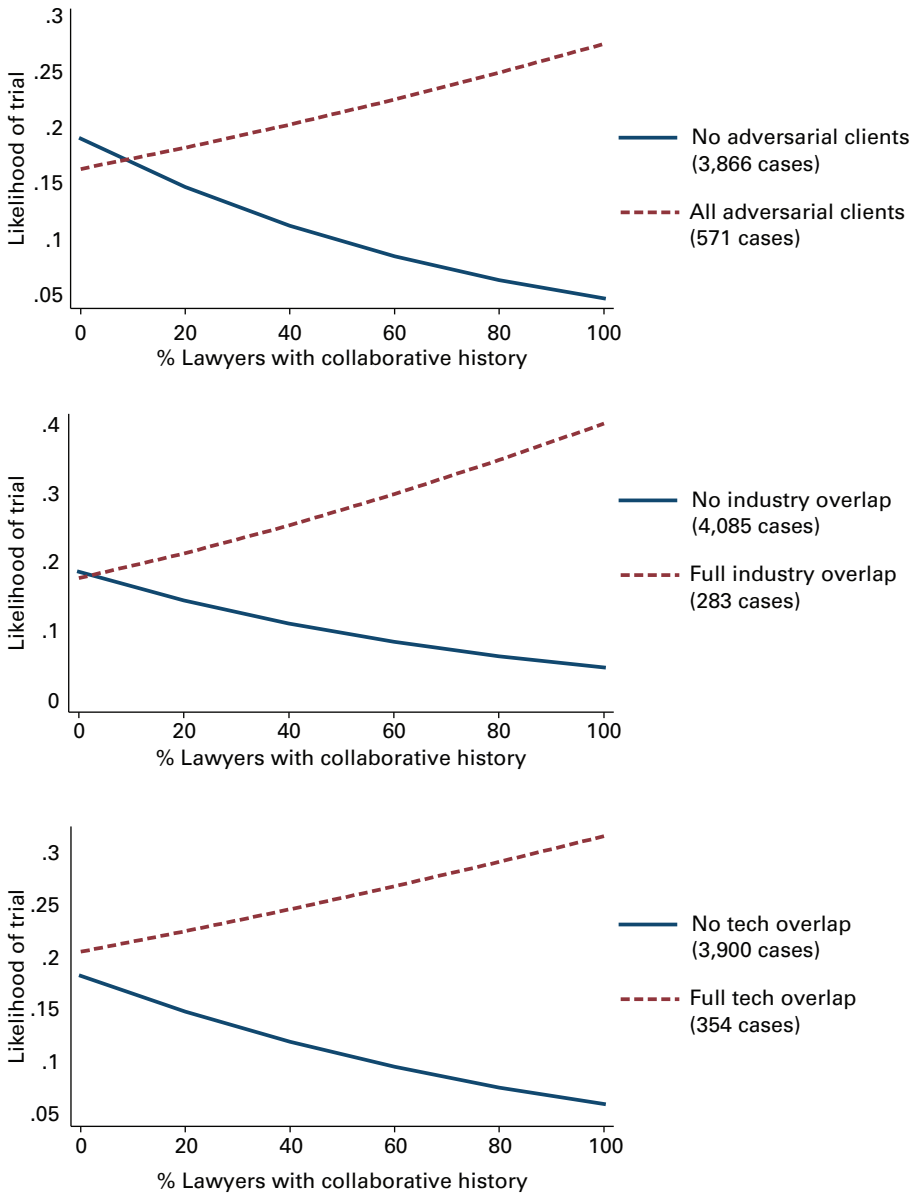
¹² We also investigated the possibility of collaboration between opposing litigation clients. Consistent with extant work (Sytch and Tatarynowicz, 2014), we found that previous collaborators rarely engaged in litigation. Using the Thomson Reuters SDC Platinum database, we found that only 52 dyads (of 25,276) ever participated in a strategic alliance, either before or after the litigation period. Furthermore, less than 1 percent of company dyads (202 of 25,276) were ever co-plaintiffs or co-defendants before litigating against one another.

¹³ In the Kleibergen–Paap (2006) test, the null hypothesis that the excluded instrument (*members of local bar (%)*) was uncorrelated with the endogenous regressor (*compensatory behavior*) was rejected at the 90-percent confidence level ($p < .10$).

lawyers with a history of collaboration to compensate with uncooperative behaviors when representing counterparts in a lawsuit. Specifically, the interaction terms for *lawyers' collaborative history* and each of the three variables measuring past conflict (*adversarial clients*) or competition (*clients' industry overlap* and *clients' technology overlap*) are positive and significant. We subsequently used the predicted values of *compensatory behavior (instrumented)* obtained

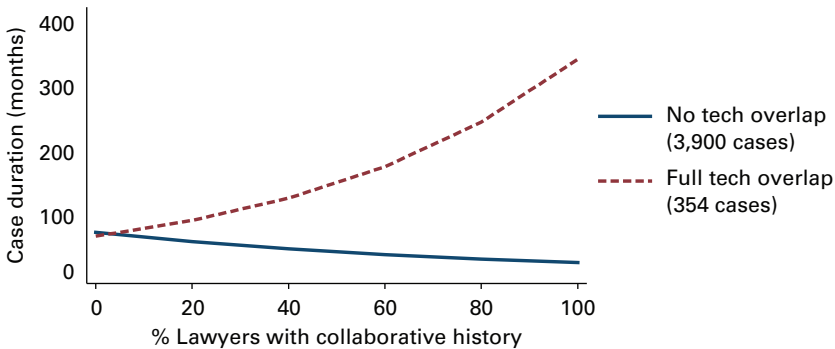
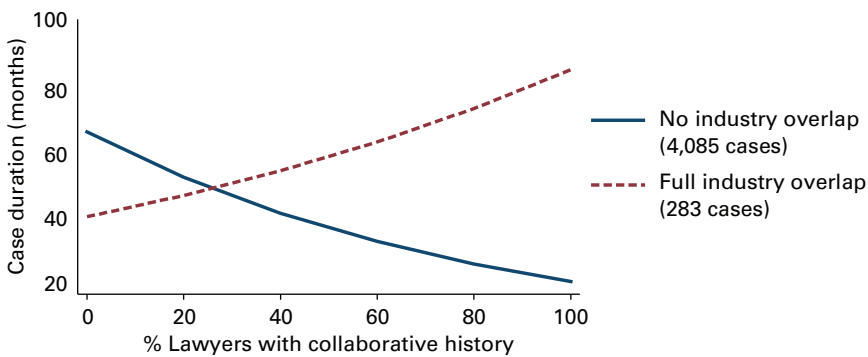
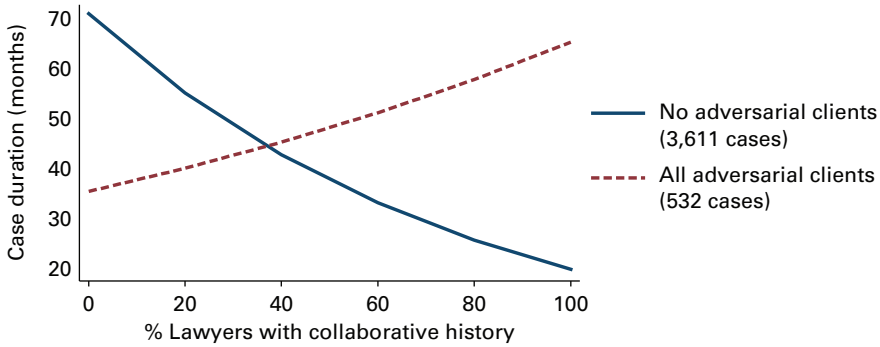
Figure 2. Contingent effect of opposing counsels' past collaboration.

Panel A: Probability of escalation to trial



(continued)

Panel B: Length of case duration in months



from the regression models in table 4 in the second-stage regressions reported in table 5.

The results in table 5 display the effect of the instrumented mediator on the probability of escalating to trial (models 1–4) and on case duration (models 5–8). The instrumented mediator has a positive, significant effect on *escalation to trial* in models 2, 3, and 4 in table 5. The effect of the instrumented mediator on *case duration* was also positive and statistically significant in models 6, 7, and 8 in table 5.

The overall mediation effect, estimated with the product of the unbiased coefficients from table 5, lends support to hypothesis 1b. Specifically, the

Table 4. Effects of Opposing Counsels' Past Collaboration on Compensatory Behaviors*

Variable	Model 1	Model 2	Model 3	Model 4
Number of lawyer dyads	.023** (.009)	.023** (.009)	.023** (.009)	.024** (.009)
Number of company dyads	-.022** (.007)	-.022** (.007)	-.022** (.007)	-.022** (.007)
% top law firm (defendant)	-.008 (.013)	-.007 (.013)	-.008 (.013)	-.008 (.013)
% top law firm (plaintiff)	-.001 (.013)	-.000 (.013)	-.001 (.013)	-.001 (.013)
Law firm size (defendant)	-.000 (.008)	.001 (.008)	-.000 (.008)	.000 (.008)
Law firm size (plaintiff)	-.018* (.007)	-.017* (.007)	-.018* (.007)	-.018* (.007)
Plaintiffs include NPE	.001 (.014)	.001 (.015)	.001 (.014)	.001 (.014)
Defendants include <i>Fortune</i> 500	.002 (.009)	.001 (.009)	.002 (.009)	.001 (.009)
Plaintiffs include <i>Fortune</i> 500	.005 (.014)	.005 (.014)	.006 (.014)	.006 (.014)
Lawyers' competitive history	.020 (.019)	.023 (.019)	.021 (.019)	.020 (.019)
Clients' settlement likelihood (defendant)	-.006 (.020)	-.006 (.019)	-.006 (.020)	-.006 (.020)
Clients' settlement likelihood (plaintiff)	.009 (.009)	.008 (.010)	.009 (.009)	.008 (.010)
Lawyers' settlement likelihood (defendant)	-.002 (.018)	-.003 (.018)	-.002 (.018)	-.003 (.018)
Lawyers' settlement likelihood (plaintiff)	-.001 (.015)	-.001 (.015)	-.001 (.015)	-.001 (.015)
Trademark or copyright infringement	-.015 (.014)	-.015 (.014)	-.015 (.014)	-.016 (.014)
Log number of patents litigated	.026** (.010)	.026** (.010)	.026** (.010)	.025* (.010)
% partners (defendant)	-.021 (.015)	-.023 (.015)	-.022 (.015)	-.021 (.016)
% partners (plaintiff)	.026 (.017)	.027 (.017)	.027 (.017)	.026 (.017)
% top JD (defendant)	-.012 (.018)	-.012 (.019)	-.012 (.018)	-.012 (.019)
% top JD (plaintiff)	.012 (.017)	.011 (.017)	.012 (.017)	.012 (.017)
Clients' industry overlap	-.012 (.010)	-.012 (.010)	-.016 (.010)	-.012 (.010)
Clients' technology overlap	-.029** (.011)	-.028** (.010)	-.028** (.010)	-.037** (.014)
Adversarial clients	.053* (.021)	.042* (.021)	.053* (.021)	.052* (.021)
Lawyers' collaborative history	-.061* (.027)	-.089** (.031)	-.072* (.028)	-.082** (.026)
Members of local bar (%)	-.106* (.041)	-.105* (.041)	-.106* (.041)	-.105* (.041)
Adversarial × Collaborative history		.141** (.051)		
Industry overlap × Collaborative history			.076* (.030)	

(continued)

Table 4. (continued)

Variable	Model 1	Model 2	Model 3	Model 4
Technology overlap \times Collaborative history				.166** (.046)
Constant	1.073** (.052)	1.070** (.053)	1.073** (.052)	1.073** (.052)
Observations	4913	4913	4913	4913
F test (against model 1)		7.54**	6.23*	12.87**

+ $p < .10$; * $p < .05$; ** $p < .01$.

* All models include year and court fixed effects. Robust standard errors clustered by court are in parentheses.

intensity of opposition in the courtroom, measured by *compensatory behavior*, mediated 16, 8, and 24 percent of the effect on escalation to trial for *Adversarial clients \times Collaborative history*, *Industry overlap \times Collaborative history*, and *Technological overlap \times Collaborative history*, respectively. The mediation effects for case duration were smaller in magnitude: 4, 2, and 9 percent, respectively, for the three interactions.

The Impact on Clients' Stock Value: Cumulative Abnormal Returns

Table 6 reports the results from OLS regressions testing hypothesis 2. Models 1, 2, and 3 present estimation results for the effects of *Adversarial clients \times Collaborative history* on firms' cumulative abnormal returns upon case termination. Models 4, 5, and 6 report the effects of *Industry overlap \times Collaborative history*, and models 7, 8, and 9 focus on the effects of *Technology overlap \times Collaborative history*. We calculated each firm's abnormal returns upon the termination of a lawsuit using three estimation windows: (1) [d] the day of lawsuit termination (models 1, 4, and 7); (2) from the day of lawsuit termination [d] to the following day [d+1] (models 2, 5, and 8); and (3) from the day of lawsuit termination [d] to two days later [d+2] (models 3, 6, and 9). Patell's (1976) z-statistic, a standard measure of statistical significance in event studies, suggests that the impact of our variables on abnormal returns was statistically significant using market model abnormal returns ($p < .05$, one-tailed), as well as market-adjusted returns ($p < .01$, one-tailed).

We find empirical support for hypothesis 2 in models 1, 2, and 3 of table 6. The interaction term *Adversarial clients \times Collaborative history* has a statistically significant negative effect on firms' cumulative abnormal returns for all estimation windows. This effect is also significant economically. The average market value lost for adversarial clients represented by lawyers who previously collaborated with opposing counsel exceeded USD \$120 million. Although the effects of *Clients' industry overlap \times Collaborative history* and of *Technological overlap \times Collaborative history* are also negative, they fail to reach statistical significance. Taken together, our results suggest that in the presence of situational triggers, collaboration with opposing counsel tends to destroy stock value for clients. This destruction of value, however, appears to be significant only when the situational trigger is adversarial clients. The effect on cumulative abnormal returns is indistinguishable from zero for competitive

Table 5. Effects of Opposing Counsels' Past Collaboration and Compensatory Behavior (Instrumented) on Escalation to Trial and Case Duration*

Variable	Escalation to Trial				Case Duration			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Number of lawyer dyads	.601** (.050)	.477** (.084)	.478** (.085)	.476** (.082)	.799** (.064)	.614** (.059)	.614** (.059)	.616** (.059)
Number of company dyads	-.023 (.097)	.098 (.125)	.096 (.125)	.097 (.124)	.129 (.079)	.308** (.101)	.307** (.101)	.306** (.101)
% top law firm (defendant)	-.254* (.105)	-.208+ (.108)	-.209+ (.108)	-.212* (.108)	.148 (.225)	.214 (.240)	.214 (.240)	.214 (.240)
% top law firm (plaintiff)	.091 (.136)	.098 (.136)	.096 (.135)	.094 (.136)	.192 (.156)	.201 (.157)	.200 (.158)	.199 (.157)
Law firm size (defendant)	.334** (.083)	.339** (.082)	.337** (.083)	.336** (.083)	-.193 (.144)	-.186 (.142)	-.190 (.144)	-.187 (.143)
Law firm size (plaintiff)	-.260** (.093)	-.158+ (.092)	-.163+ (.093)	-.162+ (.093)	.182 (.155)	.331* (.127)	.327* (.129)	.326* (.130)
Plaintiffs include NPE	-.615+ (.323)	-.618+ (.322)	-.615+ (.323)	-.621+ (.323)	-.535** (.157)	-.538** (.156)	-.534** (.156)	-.539** (.156)
Defendants include <i>Fortune</i> 500	-.275* (.120)	-.291* (.123)	-.284* (.122)	-.285* (.123)	-.100 (.103)	-.118 (.102)	-.114 (.102)	-.120 (.102)
Plaintiffs include <i>Fortune</i> 500	-.077 (.145)	-.107 (.145)	-.102 (.146)	-.106 (.146)	-.477* (.209)	-.524* (.227)	-.517* (.217)	-.517* (.219)
Lawyers' competitive history	-.590* (.253)	-.692** (.239)	-.690** (.237)	-.699** (.240)	.835+ (.457)	.687+ (.411)	.679+ (.398)	.673+ (.394)
Clients' settlement likelihood (defendant)	-.167 (.109)	-.128 (.110)	-.132 (.110)	-.133 (.111)	-.223 (.163)	-.170 (.148)	-.171 (.149)	-.172 (.147)
Clients' settlement likelihood (plaintiff)	.162 (.114)	.115 (.109)	.116 (.110)	.115 (.109)	.187 (.249)	.114 (.225)	.117 (.228)	.117 (.227)
Lawyers' settlement likelihood (defendant)	-.150 (.129)	-.143 (.131)	-.135 (.134)	-.140 (.130)	-.377* (.159)	-.362* (.156)	-.357* (.154)	-.361* (.157)
Lawyers' settlement likelihood (plaintiff)	-.267* (.117)	-.259* (.116)	-.263* (.118)	-.260* (.116)	-.424+ (.221)	-.412+ (.218)	-.415+ (.221)	-.412+ (.216)
Trademark or copyright infringement	-.113 (.178)	-.036 (.181)	-.044 (.180)	-.034 (.181)	.500* (.214)	.618** (.221)	.613** (.220)	.612** (.223)
Log number of patents litigated	-.194* (.079)	-.335** (.068)	-.335** (.067)	-.334** (.067)	.234+ (.140)	.028 (.196)	.027 (.197)	.025 (.199)
% partners (defendant)	-.391** (.128)	-.276* (.124)	-.280* (.127)	-.272* (.128)	.106 (.352)	.272 (.415)	.272 (.418)	.277 (.422)
% partners (plaintiff)	-.008 (.199)	-.145 (.200)	-.142 (.203)	-.150 (.203)	.396 (.336)	.189 (.284)	.192 (.281)	.184 (.283)
% top JD (defendant)	-.215 (.166)	-.148 (.171)	-.153 (.170)	-.147 (.173)	.184 (.278)	.283 (.288)	.280 (.287)	.283 (.286)
% top JD (plaintiff)	.179 (.192)	.102 (.182)	.113 (.185)	.112 (.184)	-.285+ (.148)	-.395** (.140)	-.389** (.144)	-.385** (.144)
Clients' industry overlap	.078 (.146)	.149 (.160)	.050 (.153)	.147 (.163)	-.351+ (.180)	-.254 (.153)	-.318+ (.184)	-.251+ (.150)
Clients' technology overlap	.211+ (.118)	.363** (.115)	.368** (.117)	.347** (.133)	.055 (.143)	.286 (.185)	.286 (.185)	.216 (.185)
Adversarial clients	-.082 (.212)	-.442* (.175)	-.371* (.186)	-.374* (.186)	-.547* (.269)	-1.026** (.293)	-.976** (.281)	-.975** (.280)
Lawyers' collaborative history	-.775 (.761)	-.892 (1.146)	-.913 (1.008)	-.602 (.938)	-.689* (.313)	-.339 (.453)	-.369 (.414)	-.374 (.475)
Instrument: Members of local bar (%)	-.580** (.198)				-.854* (.421)			

(continued)

Table 5. (continued)

Variable	Escalation to Trial				Case Duration			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Adversarial clients × Collaborative history		1.425 (1.218)				.692 (.481)		
Industry overlap × Collaborative history			2.084+ (1.103)				1.112 (.744)	
Technology overlap × Collaborative history				.700 (.784)				1.349* (.603)
Compensatory behavior (instrumented)		5.445** (1.888)	5.395** (1.869)	5.437** (1.860)		8.036* (3.957)	8.010* (3.954)	7.999* (3.952)
Constant	-1.823** (.318)	-4.757** (.996)	-4.700** (1.005)	-4.752** (1.001)	12.875** (.928)	8.379** (2.184)	8.400** (2.180)	8.413** (2.183)
Observations	4864	4864	4864	4864	4913	4913	4913	4913
Wald test (against model 1)		17.02**	16.71**	16.89**				
F test (against table 3, model 5)						4.87*	4.78*	10.70**

+ $p < .10$; * $p < .05$; ** $p < .01$.

* All models include year and court fixed effects. Robust standard errors clustered by court are in parentheses.

clients. This finding is consistent with the idea that the extreme negative affect of conflicting parties is more polarizing and disruptive than pressure from clients competing for market share or for technological ascendancy.

Alternative Explanations

Collusion. It is important to address an alternative outcome to our prediction in hypothesis 2. It is conceivable that a history of prior interaction between opposing counsel can potentially facilitate collusion at the expense of clients' interests (Granovetter, 1985; Baker and Faulkner, 1993). The significant knowledge and information asymmetries between external legal counsel and their corporate clients has led some scholars to raise concerns about the unjustified steep cost of prolonged litigation (Ross, 1996). Collusion between opposing counsel would take the form of extracting value from their clients by needlessly prolonging litigation while racking up hourly legal fees (Schwartz, 2012).

If collusion is the primary anticipated consequence of past collaboration between opposing lawyers, pressure from contending or intensively competitive clients could potentially help protect and even create value for these clients. Rather than colluding with former collaborators, opposing lawyers—perceiving tight scrutiny—may forego side deals, explore legal alternatives more thoroughly, or conduct more rigorous due diligence. Under these assumptions, the specter of scrutiny could lead to better economic outcomes from litigation by restraining collusion and aligning opposing lawyers' behavior with their clients' economic interests.

Neither our fieldwork nor our empirical results support collusion among opposing counsel as a dominant tendency in IP litigation. The norms of the profession, the high stakes of IP litigation, and the challenges of coordinating and enforcing collusion when numerous lawyers and litigants are involved all point

Table 6. Effects of Opposing Counsels' Past Collaboration on Firms' Cumulative Abnormal Returns*

Estimation window:	Model 1 [d]	Model 2 [d, d+1]	Model 3 [d, d+2]	Model 4 [d]	Model 5 [d, d+1]	Model 6 [d, d+2]	Model 7 [d]	Model 8 [d, d+1]	Model 9 [d, d+2]
Trademark or copyright infringement	.001 (.003)	.002 (.003)	.004 (.003)	.001 (.003)	.001 (.003)	.004 (.003)	.001 (.003)	.001 (.003)	.004 (.003)
Log number of patents litigated	-.000 (.001)	-.000 (.001)	.001 (.001)	-.000 (.001)	.000 (.001)	.001 (.001)	-.000 (.001)	-.000 (.001)	.001 (.001)
Case: number of companies	.000 (.000)	.000 (.000)	-.000 (.000)	.000 (.000)	.000 (.000)	-.000 (.000)	.000 (.000)	.000 (.000)	-.000 (.000)
Firm won lawsuit	.002 (.002)	.002 (.001)	.002 (.002)	.002 (.002)	.002 (.001)	.002 (.002)	.002 (.002)	.002 (.001)	.002 (.002)
Firm lost lawsuit	-.004* (.002)	-.004+ (.002)	-.002 (.003)	-.004* (.002)	-.004+ (.003)	-.002 (.003)	-.004* (.002)	-.004+ (.002)	-.002 (.003)
Clients' settlement likelihood	-.002 (.002)	-.005+ (.002)	-.007* (.003)	-.002 (.002)	-.005+ (.002)	-.007* (.003)	-.002 (.002)	-.005+ (.002)	-.007* (.003)
Lawyers' settlement likelihood	.000 (.003)	.005 (.005)	.004 (.004)	.000 (.003)	.005 (.005)	.004 (.003)	.000 (.003)	.005 (.005)	.004 (.004)
Company is plaintiff	.003** (.001)	.006** (.002)	.005** (.002)	.003** (.001)	.006** (.002)	.005** (.002)	.003** (.001)	.006** (.002)	.005** (.002)
Number of lawyers hired	-.000 (.000)	-.000 (.000)	.000 (.000)	-.000 (.000)	-.000 (.000)	.000 (.000)	-.000 (.000)	-.000 (.000)	.000 (.000)
% top law firm	-.000 (.001)	.000 (.002)	-.001 (.002)	.000 (.001)	.000 (.002)	-.001 (.002)	.000 (.001)	.000 (.002)	-.001 (.002)
Firm in <i>Fortune</i> 500	-.000 (.001)	-.000 (.001)	.000 (.002)	-.001 (.001)	-.000 (.001)	.000 (.002)	-.001 (.001)	-.000 (.001)	.000 (.002)
Firm's patent portfolio	.000 (.000)	-.000 (.000)	-.000 (.000)	.000 (.000)	-.000 (.000)	-.000 (.000)	.000 (.000)	.000 (.000)	-.000 (.000)
Lawyers' competitive history	-.006* (.002)	-.008* (.003)	-.008* (.003)	-.004* (.002)	-.007* (.003)	-.007** (.003)	-.004+ (.002)	-.006* (.003)	-.007* (.003)
Lawyers' collaborative history	-.002 (.003)	.003 (.004)	-.000 (.004)	-.002 (.003)	.003 (.004)	-.000 (.004)	-.002 (.003)	.003 (.004)	-.000 (.004)
Clients' technology overlap	.001 (.003)	.002 (.003)	.005 (.004)	.001 (.003)	.002 (.003)	.005 (.004)	.001 (.003)	.002 (.003)	.005 (.004)
Adversarial clients	.000 (.002)	-.000 (.004)	-.001 (.004)	-.003+ (.001)	-.002 (.003)	-.003 (.003)	-.003** (.001)	-.003 (.003)	-.003 (.003)
Clients' industry overlap	.002 (.003)	.001 (.003)	.002 (.004)	.001 (.003)	.001 (.003)	.002 (.004)	.002 (.004)	.002 (.004)	.003 (.005)
% top JD	.003 (.003)	.006+ (.003)	.005+ (.003)	-.000 (.002)	.003 (.002)	.002 (.002)	-.001 (.003)	.002 (.002)	.002 (.002)
% partners	-.000 (.004)	-.008 (.005)	-.003 (.005)	.001 (.005)	-.007 (.006)	-.002 (.007)	-.000 (.004)	-.008+ (.005)	-.004 (.005)
Adversarial × Collaborative history	-.019** (.006)	-.017* (.007)	-.014* (.007)						
Industry overlap × Collaborative history				-.008 (.007)	-.011 (.009)	-.007 (.010)			
Technology overlap × Collaborative history							-.001 (.010)	-.011 (.009)	-.007 (.012)
Constant	-.011 (.032)	-.043 (.058)	-.081+ (.041)	-.009 (.032)	-.041 (.058)	-.080+ (.041)	-.009 (.032)	-.041 (.058)	-.080+ (.041)
Observations	3528	3528	3528	3528	3528	3528	3528	3528	3528
Adj. <i>R</i> -squared	.031	.034	.042	.028	.033	.042	.028	.033	.042

+ $p < .10$; * $p < .05$; ** $p < .01$.

* All models include time (year and quarter) and industry (4-digit SIC code) fixed effects. Robust standard errors clustered by court are in parentheses.

to collusion as an exceptional rather than a dominant occurrence. Empirically, collusion between opposing counsel who previously collaborated would be inconsistent with the positive effect of the interactions of *Adversarial clients* × *Collaborative history*, *Clients' industry overlap* × *Collaborative history*, and *Clients' technological overlap* × *Collaborative history* on the increased likelihood of escalation to trial (models 2–4 in table 3). Trial outcomes, whether by bench or jury, are highly uncertain (Moore, 2000). In contrast, the presence of systematic collusion would appear in long duration cases that ultimately settle out of court—cases that would enable lawyers to accumulate billable hours (Schwartz, 2012) while remaining in control of the eventual legal outcome.

Selection of lawyers based on their past collaborative ties. A possible alternative explanation for the effect of compensatory behaviors is that clients engaged in a lawsuit with a competitor or an adversary may purposely hire lawyers who have collaborated with opposing counsel to gain an edge in litigation. The tactic of hiring lawyers familiar with the opposing counsel's strategies requires the unlikely assumption that the focal firm's decision makers do not understand that their opponents will have the exact same knowledge about them. More plausible is that firms would choose lawyers who have collaborated with opposing counsel in an attempt to resolve acrimony, which makes our findings about the effects of compensatory behaviors more compelling. Nonetheless, we estimated a choice model of the probability that a lawyer would be selected into a case as a function of any past interactions with opposing counsel, as well as the nature of the relationship between the opposing parties. Here, we exploited the clear temporal sequence in litigation where plaintiffs, as the initiators of legal action, select their legal representation first. Given the plaintiffs' choice of external counsel, which the defendants observe upon being served with a legal complaint, we examined the determinants of defendants' selection of legal representation from the risk set of available lawyers.¹⁴ The results of these models indicate that a defendant's choice of external counsel is driven significantly by the counsel's general experience, court-specific experience where the case is filed, and having represented the defendant in previous lawsuits. Reassuringly, we found no evidence that choice of legal representation is driven by lawyers' collaborative ties with opposing counsel at any level of client adversity or competition.

In Online Appendix B, we further explore the issue of lawyer selection by checking whether the effects reported in tables 3 and 4 would hold if we re-ran our models using data only on non-partner lawyers, thus excluding collaborations between opposing counsel involving partners at their respective law firms. While clients may exert influence in selecting partner lawyers, non-partner lawyers are typically staffed to cases internally by their employing law firm. The robustness test included in table B2 in the Online Appendix reveals patterns that are remarkably consistent with the study's overall argument. The results indicate that, in the presence of situational triggers, past collaboration between junior lawyers increases the probability of escalation to trial, the duration of lawsuits, and the incidence of compensatory behaviors. Taken together,

¹⁴ The full results of these selection models are available in Online Appendix B.

the results of these additional tests alleviate the most salient concerns about the possible impact of clients' selection of lawyers on our results.

Overconfidence. Another alternative argument is that the knowledge gained through past collaboration with the opposing counsel may promote lawyers' overconfidence in their ability to defeat their counterpart. Overconfident lawyers could potentially escalate the case to trial, because both sides increase their commitment to besting the opposition. Although conceptually plausible, our results do not support this alternative explanation. The overconfidence argument would predict that lawyers' prior collaborative history would increase the likelihood of escalation to trial and prolong the case duration. We do not find evidence to support this prediction in any of the models. In fact, the coefficients of *lawyers' collaboration* in models 3, 5, 6, 7, and 8 in table 3 indicate the opposite: prior collaboration among opposing lawyers has a negative main effect on the probability of escalating to trial and tends to shorten the duration of legal proceedings. Furthermore, it is not clear why the effect of lawyers' overconfidence would be affected by adversarial or competitive relationships between their clients.

Failed past collaboration. Another alternative explanation is that the effect of compensatory behaviors could be explained by failed past collaborations among opposing lawyers. In line with recent research (e.g., Zhelyazkov and Gulati, 2016), enacted behaviors could differ depending on whether a past collaboration between opposing lawyers resulted in success or failure for the clients. The latter outcome could engender strained interactions when past collaborators meet again as opposing counsel. We investigated this possibility by analyzing the outcomes of past collaborations.

Although we had no information on whether out-of-court settlements were considered successes or failures, verdicts finding for the plaintiff would most likely indicate a failed collaboration for the lawyers representing the defendant and vice versa. Our analysis revealed that a large proportion of lawsuits in which opposing counsel were listed on the same side had either not concluded by the time the focal case started or were settled privately. We found only 41 cases (among 1,047 possible) in which a collaboration between opposing counsel representing adversarial clients resulted in a ruling for the plaintiff or the defendant.¹⁵

Regardless of past conflict or competitive tensions between clients, we found no evidence that the likelihood of escalation to trial increased when opposing counsel had experienced a loss in their prior collaboration. The overall trial rates were not statistically different for cases in which opposing lawyers experienced a loss in their previous collaboration (about 19 percent) than for cases in which opposing lawyers registered a win in their previous collaboration (about 16 percent).

¹⁵ In supplementary analyses available in Online Appendix C, we found evidence that negative compensatory behaviors are much more likely when lawyers are currently collaborating in a different case that is not yet terminated. By contrast, lawyers' collaboration on cases that were terminated before the start of the focal lawsuit do not significantly drive negative compensatory behaviors.

Limitations

Some empirical issues could not be addressed definitively with our current data. Some of these questions constitute potential avenues for future research. First, although we found no evidence that defendants select external counsel based on their past collaborations with the plaintiff's lawyers, additional unobserved factors may influence the complex process of lawyer selection. It is conceivable that some of those factors may correlate with our variables of interest, limiting our ability to conclusively claim causal identification. Second, we postulated two motivations for agents' compensatory behaviors: (1) to manage impressions of loyalty toward their principals and (2) to maintain a reputation for loyalty. Our data preclude us from empirically disentangling these two. Studying these motivations calls for further research that carefully examines the tactics available to principals to influence the behaviors of the agents representing them. In our context, impression management may be driven largely by the extent to which clients attempt to control their external counsel. In particular, clients who want to influence their external legal counsel's stance toward the opposition may deploy in-house lawyers to participate in the courtroom proceedings. We explored this possibility empirically by manually checking whether in-house counsel appeared in the signature boxes of the documents submitted during the course of litigation proceedings. We found 264 cases (about 5 percent of the data) in which the in-house counsel participated as attorneys of record. Although the small sample size precluded parametric estimation, a t-test revealed that compensatory behaviors were more common in cases in which in-house counsel was present ($p < .01$). This evidence suggests that clients' compensatory behaviors are enacted at least in part as an impression management strategy in response to clients' control.

DISCUSSION

This study documents how a history of collaboration between rivals, instead of facilitating future collaboration, can turn into a liability and escalate conflict between them. When past collaboration with a rival invokes loyalty concerns from salient stakeholders, actors may respond with uncooperative compensatory behaviors meant to demonstrate social and psychological distance from the former collaborator. These compensatory behaviors are aimed at establishing unbridled loyalty to the stakeholders. Such dynamics take place when pressures from stakeholders for unwavering loyalty are likely to be particularly strong, such as when the stakeholders are adversarial or intensely competitive. Our results indicate that such compensatory behaviors ultimately impede cooperative interactions, escalate conflict, and result in lost value.

We have developed this theory for general scenarios in which contesting principals are being represented by professional third-party agents. Such scenarios involve contesting companies ("principals") being represented by bankers, lawyers, consultants, or lobbyists (collectively called "agents"). Conflict of interest rules often prevent agents from working against principals, including former clients, on which they may have confidential information. Yet these regulations do not preclude the agents who have previously collaborated from representing contesting principals. In these situations, agents' loyalty comes to the forefront as principals face asymmetries in knowledge and information,

often coupled with imperfect alignment of incentives. We tested this theory in the context of intellectual property lawsuits, in which corporate plaintiffs and defendants are being represented by external legal counsel. Our findings indicate that rival lawyers who have collaborated previously by representing the same side in litigation tend to thwart effective negotiations when representing clients who compete intensely or who have experienced past conflict. A history of collaboration with opposing counsel can require lawyers to manage the clients' loyalty impressions and can also heighten lawyers' concerns about their reputation as zealous advocates of their clients' interests. The resulting compensatory behaviors, which reduce cooperation with opposing counsel, could be intended to both reassure the client of the agent's loyalty and protect the agents' reputation for loyalty. Such dynamics ultimately prolong legal proceedings, increase the likelihood of the lawsuits' escalation to trial, and destroy value for litigating clients.

With these findings, the present study makes several contributions. First, we contribute to work on social embeddedness (e.g., Granovetter, 1985; Gulati, 1995; Uzzi, 1997) by explicating a set of conditions under which a history of prior collaboration can systematically exacerbate conflict rather than facilitate collaboration. This finding constitutes a notable extension to understanding how past collaboration drives future interactions. Existing work, including work that has questioned the benefits of repeated collaboration, has overwhelmingly suggested that past collaboration translates into future collaboration (e.g., Zaheer, McEvily, and Perrone, 1998; Gargiulo and Benassi, 1999; Sorenson and Waguespack, 2006). This study, however, suggests that considering the loyalty implications of relational histories can offer a more comprehensive analysis of future interactions.

Recognizing the possible constraints that past collaboration could place on future interactions carries far-reaching implications for our understanding of dyadic exchanges featuring principal-agent interactions (e.g., Uzzi, 1997; Gulati and Sytch, 2007; Zaheer, Hernandez, and Banerjee, 2010), including the principals' role in shaping agents' career outcomes (e.g., Beckman and Phillips, 2005). Future models of the dynamics and implications of social structure that interlink corporate agents and principals could therefore benefit from a more systematic integration of and attention to how actors' reputational considerations as collaborators and rivals affect their interactions. With the proliferation of network research studying the dynamics and outcomes of social structures in which agents represent clients—such as investment banking syndicates (e.g., Baum et al., 2005; Shipilov, Li, and Greve, 2011), marketing efforts (e.g., Rogan and Sorenson, 2014), or lobbying (e.g., Bermiss and Greenbaum, 2016)—the interplay between evaluative and structural dynamics presents a valuable avenue for future research. Our work provides a step in that direction by highlighting instances when loyalty requirements hamper cooperative interactions between rival agents who have previously collaborated.

It is critical to note that our theory is based on the premise that the agent values loyalty to the current principal over relational attachment to former collaborators representing the opposing party. We estimate that this scope condition applies to the large class of interactions in which agents significantly depend on and follow clients' work, such as those in lobbying, public relations, marketing, consulting, banking, and legal services sectors (e.g., Khanna, Gulati, and Nohria, 1998; Yu, Subramaniam, and Cannella, 2013; Rogan, 2014; Sytch

and Tatarynowicz, 2014). Future research may, however, uncover conditions that may shift agents' allegiance away from their principals and toward former peer collaborators.

The possible implications for collaboration in the presence of loyalty concerns are not limited to principals evaluating their agents. Our focus on compensatory responses following loyalty threats contributes to work on the role evaluative audiences play in shaping social interaction and social construction processes (e.g., Phillips and Zuckerman, 2001; Zuckerman, 2004; Kovács and Sharkey, 2014). We demonstrate how evaluative pressures from key audiences can trigger unforeseen responses that overwhelm the pull emerging from relational proximity in social structures. Consider an executive hired from a competitor, an athlete acquired from a rival team, a vendor who previously partnered with a competitor, or an activist joining a social movement organization after a long corporate career. Given the actors' potentially compromising affiliations, salient stakeholders, including colleagues, associates, and business partners, may question the loyalty of these actors and thus potentially destabilize ensuing interactions.

Insights from the present study may also inform research on labor mobility. A professional or knowledge worker who moves to a rival firm creates a situation in which the worker can end up competing for clients or for business with former collaborators (Somaya, Williamson, and Lorinkova, 2008; Agarwal, Ganco, and Ziedonis, 2009; Bermis and Greenbaum, 2016). Using our theoretical framework, research on labor mobility can consider industry-specific situational triggers that may lead to increased rivalry between former collaborators. For example, when do mobility events result in former collaborators aggressively suing one another or poaching one another's clients? These ideas can be refined in the context of labor mobility through the revolving door, which describes how employees move between regulatory and legislative government agencies and private firms affected by these agencies' oversight (Cohen, 1986; Blanes i Vidal, Draca, and Fons-Rosen, 2012; Lambert, 2019). For example, a banker-turned-financial-regulator may be tougher on his or her former employer when feeling pressured to demonstrate loyalty to new stakeholders. The findings of this study suggest that our theory can be particularly applicable when loyalty norms are salient and when perceptions of betrayal have costly repercussions (e.g., Adler and Adler, 1988; Phillips, Turco, and Zuckerman, 2013; DiBenigno, 2018).

Future work could also explore the applicability of our findings to the study of immigration flows between countries (Portes and Sensenbrenner, 1993; Perez, 2015; Li, Hernandez, and Gwon, 2019). During economic prosperity and political stability, these flows can increase collaboration and understanding between citizens of different countries (Portes, Guarnizo, and Landolt, 1999). Economic, political, or military tensions between host and sending countries, however, raise suspicions about persons with foreign attachments (Waldinger and Fitzgerald, 2004). Our study suggests that one implication of situational triggers could be that immigrants seeking legitimacy in the host country may respond to triggers by creating social and psychological distance from their home country. Thus transnational communities—instead of fostering cultural and relational proximity—could erode social capital between conflicting nations. This analytical lens carries important societal implications given that the large and increasing flows of both voluntary and forced migrants across national

borders require a richer understanding of how to create and sustain collaborative interactions that span national, ethnic, and religious identities.

Although IP litigation provided a rich context to test our arguments, lawyers' professional reputation is tethered to client loyalty, which may not be the case in other contexts. Future work can explore the generalizability of our theory by examining dynamics in which agents confront a more diffuse set of stakeholders. For example, the identity of many U.S. regulatory and enforcement agencies is centered on a general sense of uncompromised impartiality, which is above the fray of partisan politics. Sustaining disciplined impartiality provides the requisite public credibility and trust for these agencies to execute their regulatory and enforcement functions. In this setting, stakeholders such as the news media could use a history of collaboration to raise doubts about an agency's impartiality.¹⁶ Compensatory behaviors such as aggressively investigating other government officials would aim to safeguard and demonstrate uncompromising impartiality. Future work in this and other contexts could improve our understanding of contingencies that may augment or challenge elements of our theory.


Organizations and governments dedicate substantial resources to protecting social and economic capital from some of the inherent risks of relational embeddedness. Interventions include appointing independent directors to corporate boards, requiring banks to erect Chinese walls between securities analysts and investment bankers, and—for accounting firms—isolating consulting services from auditing practices. Such interventions often elicit social influence behaviors from the actors they are intended to control (Westphal, 1998). Our study suggests that these interventions may be situational triggers of costly compensatory behaviors. Resolving hostile disputes often requires third parties who understand both sides. In polarized contests, however, the very same social capital can destroy value and perpetuate conflict.


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Supplemental Material

Supplemental material for this article can be found in the Online Appendix at <http://journals.sagepub.com/doi/suppl/10.1177/0001839219877507>.

¹⁶ Threats to this standard can devalue the public standing of these agencies into what a former FBI director described as “just another partisan player in a polarized world” (Comey, 2018: 179).

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